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Staff: Tiffany S. Tauber
Staff Report: December 29, 2005
Hearing Date: January 12, 2005
Commission Action:

TO: Commissioners and Interested Parties

FROM: Peter Douglas, Executive Director
Robert S. Merrill, North Coast District Manager
Tiffany S. Tauber, Coastal Planner

SUBJECT: **Humboldt County LCP Amendment No. HUM-MAJ-1-99-B (Housing Element) (Meeting of January 12, 2005)**

SYNOPSIS:

Description of Proposed LCP Amendment:

The proposed Humboldt County LCP amendment stems from a comprehensive update of the Housing Element portion of the County's General Plan, which identifies housing needs in the unincorporated areas of the County and directs the implementation of programs to address those housing needs. According to the County, the purpose of the proposed LCP amendment is to facilitate the accommodation of current and future housing needs and to comply with State law regarding affordable housing. Accordingly, the amendment proposes to incorporate provisions for allowing density bonuses pursuant to the requirements of Government Code Section 65915. The amendment would also increase the separate existing allowable density bonus for projects providing extraordinary public benefits in Planned Unit Development (PUD) districts from 20% to 25% and include revised design guidelines for PUDs. The amendment also involves various changes to provisions regarding different types of residential uses throughout the

County and associated permit requirements to encourage more affordable housing and to better meet housing needs of all segments of the County's population. Accordingly, the amendment intends to encourage less expensive housing development by reducing permit requirements and development standards for certain types of development.

The proposed amendment would make changes to the six area plans of the Land Use Plan to allow for density bonuses for affordable housing projects and planned unit developments. The amendment proposes to make a number of significant changes to the Coastal Zoning Ordinance.

In brief, the proposed amendment includes as follows:

Density Bonus and Planned Unit Development (LUP)

The proposed LUP amendment would add a new section to the Introduction of the "Standards for Plan Designations" section in each of the six Area Plans that would allow for density ranges in land use designations to be exceeded (1) to encourage affordable housing pursuant to Government Code Section 65915, and (2) within Planned Unit Developments (PUD) consistent with existing PUD policies in the LCP.

De Minimus Waivers

The proposed amendment would allow the Planning Director to issue de minimus waivers for certain types of development that (1) are consistent with the zoning ordinance, and (2) involve no potential for any adverse effect, either individually or cumulatively on coastal resources or public access to coastal resources where acquired through use or legislative authorization. The amendment includes a list of development types proposed by the County for which coastal permit requirements would be waived and includes, in part: small retaining walls, demolition of non-historic structures, test wells, wetland restoration, removal of contaminated backfill, and property mergers.

Cottage Industries

The proposed amendment to the Cottage Industry provisions would (1) set forth additional performance standards for cottage industries to distinguish between cottage industries that require a coastal development permit and those that do not, and (2) move cottage industries from a conditionally permitted use to a principal permitted use in all of the zones where they are currently allowed.

Residential Density Bonus Ordinance

The proposed amendment would incorporate the density bonus provisions mandated by Government Code Section 65915 regarding affordable housing. Currently, the certified Coastal Zoning Ordinance does not contain density bonus provisions for affordable housing. As proposed, the amendment would allow a minimum 25% increase over the maximum allowable density (with fractions rounded up) when a developer agrees to construct at least 20% of the total units in a housing development for low or moderate

income households or 10% of the total units for lower-income households, or to construct a senior housing project.

Design Review

The proposed amendment would (1) change the Special Permit requirement to a coastal development permit, and (2) exempt certain additions to existing structures from coastal permit and design review requirements including (1) minor additions to existing structures provided that they meet certain area and height limitations and are not located in a sensitive coastal resource area, and (2) the installation or removal of windows, doors, or siding material provided that new siding material is non-reflective.

Special Occupancy Parks

The proposed amendment would change the existing Recreational Vehicle provisions to apply to Special Occupancy Parks, which by definition include Recreational Vehicle Parks, Temporary Recreational Vehicle Parks, Incidental Camping Areas, and Tent Camps. The amendment would make changes and additions to the definitions section of the Coastal Zoning Ordinance, and other related sections, to include various changes to the definitions of commercial recreation uses (i.e., types of camping), associated changes to permitted uses in certain zoning districts, and some modifications to the criteria for approving these various uses. According to the County, the proposed zoning ordinance changes are intended to help accommodate nomadic housing consistent with State law.

Planned Unit Developments

The amendment would make changes to the provisions regarding Planned Unit Developments (PUD) to (1) increase the allowable density standard from 20% to a maximum of 25% for those developments incorporating extraordinary public benefits, (2) add additional residential density standards, and (3) provide updated and more thorough design guidelines.

Second Residential Units

The proposed amendment would (1) allow second residential units as a principal permitted use in the Residential Single Family (RS) and Rural Residential Agriculture (RA) zoning districts, (2) make changes to permit requirements and development criteria, and (3) add additional supplemental findings required to be made when approving a second residential unit.

Home Occupations

The amendment would make changes to the provisions regarding Home Occupations to allow for modifications or waivers of Home Occupation standards including location, entry access, physical alterations, and the number of employees upon obtaining a coastal development permit.

The proposed amendment also includes several minor additional changes to the Coastal Zoning Ordinance that do not raise issues of conformance of the Implementation Plan

with or its adequacy to carry out and implement the Land Use Plan. These miscellaneous amendments include:

- Reducing permit requirements for caretakers apartments in commercial areas;
- Eliminating the requirement that duplexes be built side-by-side;
- Allowing parkland dedication fees for second units to be paid upon construction of the second unit;
- Clarifying when single-family homes can be allowed on multi-family zoned lots.

A copy of the County's proposed amendment with the full text is included at the end of this report as Attachment A.

Summary of Staff Recommendation:

The staff recommends that the Commission, upon completion of a public hearing, **deny the proposed amendment and certify the amendment request with suggested modifications**. The County's proposal to amend the Land Use Plan to allow for density bonuses for affordable housing projects and planned unit developments can be found consistent with the Chapter 3 policies of the Coastal Act only if modified. The County's proposal to amend the Implementation Program to make numerous changes that would encourage more affordable housing by reducing permit requirements and development standards for certain types of development can be found adequate to carry out the certified Land Use Plan only as modified.

Some of the more significant changes proposed by LCP Amendment No. HUM-MAJ-1-99-B and the associated modifications suggested by staff include the following:

- Density Bonus and Planned Unit Development (LUP)

The proposed LUP amendment would add a new section to the Introduction of the "Standards for Plan Designations" section in each of the six Area Plans that would allow for density ranges in land use designations to be exceeded (1) to encourage affordable housing pursuant to Government Code Section 65915, and (2) within Planned Unit Developments (PUD) consistent with existing PUD policies in the LCP.

Suggested Modification Nos. 1 and 2 would clarify that the residential density increase shall only be approved if it is determined that the means of accommodating the proposed development standard modifications would not have an adverse effect on coastal resources and would be consistent with all applicable local coastal program policies and development standards. Suggested Modification No. 1 would also specify the maximum allowable density increase for planned unit developments and include a statement that reflects proposed IP language noting that the 25% density bonus limit for PUDs is the

maximum density bonus permitted and that it may not be combined with any other density bonus allowed by County or State regulations if densities greater than 25% would result.

- De Minimus Waivers

The proposed amendment would allow the Planning Director to issue de minimus waivers for certain types of development that (1) are consistent with the zoning ordinance, and (2) involve no potential for any adverse effect, either individually or cumulatively on coastal resources or public access to coastal resources where acquired through use or legislative authorization. The amendment includes a list of development types proposed by the County for which coastal permit requirements would be waived and includes, in part: small retaining walls, demolition of non-historic structures, test wells, wetland restoration, removal of contaminated backfill, and property mergers.

Suggested Modification Nos. 4, 5, 6, and 7 would more accurately state the definition, applicability, and requirements for notice of intent and findings for de minimus waivers. Additionally, Suggested Modification No. 5 would delete several types of development that are considered to have the potential for adverse impacts to coastal resources from the County's proposed list of development that could be considered de minimus.

- Residential Density Bonus Ordinance

The proposed amendment would incorporate the density bonus provisions mandated by Government Code Section 65915 regarding affordable housing. Currently, the certified Coastal Zoning Ordinance does not contain density bonus provisions for affordable housing. As proposed, the amendment would allow a minimum 25% increase over the maximum allowable density (with fractions rounded up) when a developer agrees to construct at least 20% of the total units in a housing development for low or moderate income households or 10% of the total units for lower-income households, or to construct a senior housing project.

Suggested Modification No. 10 would require the County to identify all feasible means of accommodating the density increase and incentives or concessions with specific consideration toward the effects of such means on coastal resources when reviewing a proposed density increase and grant a density increase and incentives or concessions only if it is determined that the means of accommodating the density increase and incentives or concessions proposed by the applicant would not have an adverse effect on coastal resources. Suggested Modification Nos. 11-14 would establish consistency between the County's proposed amendment and the current applicable requirements of Government Code Section 65915.

- Planned Unit Developments

The amendment would make changes to the provisions regarding Planned Unit Developments (PUD) to (1) increase the allowable density standard from 20% to a maximum of 25% for those developments incorporating extraordinary public benefits, (2) add additional residential density standards, and (3) provide updated and more thorough design guidelines.

Suggested Modification No.19 would clarify that the modifications of development standards regarding residential density, lot size, lot coverage, setbacks, and building types shall only be approved if it is determined that the means of accommodating the proposed development standard modifications would not have an adverse effect on coastal resources. Suggested Modification No. 20 would clarify that the proposed PUD design guidelines do not eliminate or supercede the need to comply with all other applicable requirements of the certified LCP.

- Second Residential Units

The proposed amendment would (1) allow second residential units as a principal permitted use in the Residential Single Family (RS) and Rural Residential Agriculture (RA) zoning districts, (2) make changes to permit requirements and development criteria, and (3) add additional supplemental findings required to be made when approving a second residential unit.

Suggested Modification No. 21 would clarify that all second units would require a coastal development permit. Suggested Modification No. 22 would add additional development standards to regarding the provision of adequate services, and the protection of public access, visual resources, environmentally sensitive habitat area and wetlands, and agricultural lands. Suggested Modification No. 23 would make it clear that all residential second units must conform to these standards to be permitted and would require the decision-making authority to adopt supplemental findings for such units demonstrating how the development is consistent with these development standards and other standards of the second residential unit provisions of the zoning ordinance.

- Principally Permitted Use

The existing certified IP lists several principal permitted uses many of the County's zoning districts with no single use designated as *the* "principal permitted use." Therefore, in the districts with no single use designated as *the* "principal permitted use," the IP is interpreted such that every development permitted as a principal permitted use in a particular zoning district is appealable to the Commission. This creates a cumbersome and unnecessary problem that can be rectified by identifying one "principal permitted use" for purposes of appeals to the Coastal Commission. The proposed amendment to

the Implementation Program includes various changes specifically to eleven of the nineteen zoning districts in the County's coastal zoning ordinance.

Suggested Modification Nos. 24-34 would identify one "principal permitted use" for these eleven zoning districts for purposes of appeals to the Coastal Commission pursuant to Section 312-13.12.3 of the County's Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act.

- Other Proposed Changes

Staff also recommends several suggested modifications to the County's proposed amendment regarding Cottage Industries, Design Review, Special Occupancy Parks, and Home Occupations.

The IP amendment also includes several minor additional changes do not raise issues of conformance of the Implementation Plan with or its adequacy to carry out and implement the Land Use Plan. These miscellaneous amendments include:

- Reducing permit requirements for caretakers apartments in commercial areas;
- Eliminating the requirement that duplexes be built side-by-side;
- Allowing parkland dedication fees for second units to be paid upon construction of the second unit;
- Clarifying when single-family homes can be allowed on multi-family zoned lots.

With the suggested modifications, staff believes the Land Use Plan component of the amendment will be consistent with the Chapter 3 Policies of the Coastal Act, **and** the implementation component will be adequate to carry out the certified Land Use Plan.

The appropriate motions and resolutions to adopt the staff recommendation are found on pages 8-10 of this report.

Addendum:

This staff report does not contain the findings for certification with modifications of the portion of the proposed LCP amendment related to amendments to the Home Occupation provisions of the Implementation Plan. Staff was unable to complete these findings prior to the mailing of the staff report. However, staff will present the recommended findings as part of an addendum at the Commission meeting.

Analysis Criteria:

The relationship between the Coastal Act and a local government's Local Coastal Program can be described as a three-tiered hierarchy with the Coastal Act setting generally broad statewide policies. The Land Use Plan (LUP) portion of the LCP incorporates and refines Coastal Act policies for the local jurisdiction, giving guidance as to the kinds, locations, and intensities of coastal development. The Implementation Program (IP), or zoning portion of an LCP typically sets forth zone districts and site regulations which are the final refinement specifying how coastal development is to proceed on a particular parcel. The LUP must be consistent with the Coastal Act. The IP must conform with, and be adequate to carry out the policies of the LUP.

In this case, the proposed LCP amendment affects both the LUP and IP components of the Humboldt County LCP. The LUP portion of Humboldt County's LCP consists of six (6) Area Plans, including by area from north to south: (1) North Coast, (2) Trinidad, (3) McKinleyville, (4) Humboldt Bay, (5) Eel River, and (6) South Coast. The proposed LCP amendment would effectuate changes to all six area plans of the LUP and to the Coastal Zoning Regulations.

Additional Information:

For further information, please contact Tiffany S. Tauber at the North Coast District Office (707) 445-7833. Correspondence should be sent to the District Office at the above address.

PART ONE: RESOLUTIONS AND SUGGESTED MODIFICATIONS

I. MOTIONS, STAFF RECOMMENDATIONS, AND RESOLUTIONS FOR LCP AMENDMENT NO. HUM-MAJ-1-99-B

A. DENIAL OF LUP AMENDMENT NO. HUM-MAJ-1-99-B, AS SUBMITTED:

MOTION I: *I move that the Commission certify Land Use Plan Amendment No. HUM-MAJ-1-99-B as submitted by the County of Humboldt.*

STAFF RECOMMENDATION TO DENY:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the amendment as submitted and adoption of the following resolution and findings.

The motion to certify as submitted passes only by an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION I TO DENY CERTIFICATION OF THE LAND USE PLAN AS SUBMITTED:

The Commission hereby denies certification of the Land Use Plan Amendment No. HUM-MAJ-1-99-B as submitted by the County of Humboldt and adopts the findings set forth below on the grounds that the land use plan amendment does not conform with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the land use plan amendment may have on the environment.

B. CERTIFICATION OF LUP AMENDMENT NO. HUM-MAJ-1-99-B WITH SUGGESTED MODIFICATIONS:

MOTION II: *I move that the Commission certify Land Use Plan Amendment No. HUM-MAJ-1-99-B for the County of Humboldt if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION TO CERTIFY WITH SUGGESTED MODIFICATIONS:

Staff recommends a **YES** vote. Passage of the motion will result in the certification of the land use plan amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

RESOLUTION II TO CERTIFY WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies Land Use Plan Amendment No. HUM-MAJ-1-99-B for the County of Humboldt if modified as suggested and adopts the findings set forth below on the grounds that the land use plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the land use plan amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any

significant adverse impacts which the land use plan amendment may have on the environment.

C. DENIAL OF IMPLEMENTATION PLAN AMENDMENT NO. HUM-MAJ-1-99-B, AS SUBMITTED:

MOTION III: *I move that the Commission certify Implementation Plan Amendment No. HUM-MAJ-1-99-B as submitted by the County of Humboldt.*

STAFF RECOMMENDATION TO DENY:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the amendment as submitted and adoption of the following resolution and findings. The motion to certify as submitted passes only by an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION I TO DENY CERTIFICATION OF THE IMPLEMENTATION PLAN AS SUBMITTED:

The Commission hereby denies certification of the Implementation Plan Amendment No. HUM-MAJ-1-99-B on the grounds that, as submitted, it does not conform with and is inadequate to carry out the provisions of the Land Use Plan as certified. There are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impact, within the meaning of CEQA that the approval of the Implementation Program would have on the environment.

D. APPROVAL OF IMPLEMENTATION PLAN AMENDMENT NO. HUM-MAJ-1-99-B IF MODIFIED AS SUGGESTED:

MOTION IV: *I move that the Commission certify Implementation Program Amendment No. HUM-MAJ-1-99-B for Humboldt County if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM
AMENDMENT WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies Implementation Program Amendment No. HUM-MAJ-1-99-B for the County of Humboldt, if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program with the suggested modifications will conform with, and be adequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Program if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

II. SUGGESTED MODIFICATIONS

Key for County Amendment and Commission Modification Language

The Suggested Modifications proposed by the Commission are set forth below. A copy of the full text of the County's proposed LCP amendment is included as an attachment at the end of the report, showing in double underline and single strikethrough how the County's proposals would alter the existing LCP text. In this section and throughout the staff report, however, the text can be read as follows:

- Existing LCP language is shown in plain type;
- Language added by the County is shown in underline;
- Language deleted by the County is shown in ~~strikethrough~~;
- Language added by the Commission is shown in **bold double underline**;
- Language deleted by the Commission is shown in ~~double-strikethrough~~.

Note also that in cases where a Suggested Modification alters the numbering sequence of a policy section, it is implied that the section would be renumbered accordingly.

A. SUGGESTED MODIFICATIONS TO THE LAND USE PLAN:

Suggested Modification No. 1 (Density Bonus and Planned Unit Development):

Modify the following language proposed by the County as new Section 5.15 in the Eel River, South Coast, McKinleyville, and North Coast Area Plans, as new Section 4.15 in the Trinidad Area Plan, and as a new paragraph to existing Section 4.10 in the Humboldt Bay Area Plan with modifications as follows:

DENSITY BONUSES AND PLANNED UNIT DEVELOPMENTS

Density ranges described in land use designations may be exceeded **by a minimum of 25% and a maximum of 35%** to encourage affordable housing production pursuant to §65915 of the California Government Code (Density Bonuses) **in effect in 2005. Any housing development approved pursuant to Government Code Section 65915 shall be consistent with all applicable certified local coastal program policies and development standards. In reviewing a proposed density increase, the County shall identify all feasible means of accommodating the density increase and consider the effects of such means on coastal resources. The County shall only grant a density increase if the County determines that the means of accommodating the density increase proposed by the applicant does not have an adverse effect on coastal resources. If, however, the County determines that the means for accommodating the density increase proposed by the applicant will have an adverse effect on coastal resources, the County shall not grant the density increase.** Density ranges may also be exceeded within Planned Unit Development (PUD's) **up to 25% if increasing the density would not have an adverse effect on coastal resources and would be consistent with all applicable local coastal program policies and development standards. The 25% density bonus limit for PUDs is the maximum density bonus permitted; it may not be combined with any other density bonus allowed by County or State regulations if densities greater than 25% would result.** Also a variety of housing types and a mixture of residential and commercial uses may be allowed to encourage affordable housing production under the provisions of State law referenced above, and in PUD's to encourage the provision of extraordinary public benefits within subdivisions.

Suggested Modification No. 2 (Planned Unit Development):

Add the following language to the existing Planned Unit Development sections of the six Area Plans:

D. PLANNED UNIT DEVELOPMENT

1. It shall be the policy of the County to encourage the Planned Unit Development (PUD) concept. Where such utilization would provide extraordinary benefits to the community and to the County, such as: dedications of open space and public access, protection of visual resources and sensitive habitats beyond that already required in Sections 3.41 and 3.42, incentives may include increases of up to ~~20%~~ **25%** over planned densities **if increasing the density would not have an adverse effect on coastal resources and would be consistent with all applicable local coastal program policies and development standards. The 25% density bonus limit for PUDs is the maximum density bonus permitted; it may not be**

combined with any other density bonus allowed by County or State regulations if densities greater than 25% would result.

B. SUGGESTED MODIFICATIONS TO THE IMPLEMENTATION PLAN

Suggested Modification No. 3 (Formatting)

Section numbers shall be consistent with the section numbers as revised by Coastal Zoning Ordinance formatting LCP Amendment No. HUM-MAJ-1-00 (Part A) approved by the Coastal Commission on December 15, 2000.

Suggested Modification No. 4 (De Minimus Waivers)

Revise the proposed definition of De Minimus Waiver as follows:

De Minimus Waiver. The waiver of some coastal development permit requirements for development that 1) is consistent with the **certified LCP zoning ordinance**, and 2) involves no potential for any adverse effect; either individually or cumulatively on coastal resources or public access to coastal resources where acquired through use or legislative authorization.

Suggested Modification No. 5 (De Minimus Waivers)

Revise proposed Section A315-28 as follows:

Section A315-28 DE MINIMUS WAIVERS FROM PERMIT REQUIREMENTS

A. Applicability. The procedural requirements of this chapter may be waived by the Planning Director to simplify the review of ~~small~~ projects that **involve no potential for any adverse effects, either individually or cumulatively, on coastal resources and that are consistent with the certified LCP.** ~~will have no adverse impacts on coastal resources.~~

B. Criteria for Waiver of Procedures.

The procedural requirements of this Chapter may be waived by the Planning Director to allow the following development:

Construction of retaining walls less than 4 feet in height with a maximum surface area of 100 square feet,

Demolition of non-historic structures,

Placement of private test water supply wells,

"One for one" replacement or abandonment of minor utilities,
Repair and replacement work associated with underground and above ground
storage tanks,
~~Wetland restoration,~~
~~Removal of contaminated backfill and contaminated soil,~~
Installation of monitoring wells, vadose wells, temporary well points, and
vapor points, and
Merger of property.

Suggested Modification No. 6 (De Minimus Waivers):

Revise proposed Section A315-28(D)(5) and (6) as follows:

(5) At the time a Notice of Intent To Issue A de Minimus Waiver is provided to
the public, the Planning Director shall also report to the referral agencies and
each Planning Commission member the project description, recommended
action, ~~conditions of approval,~~ and findings for each project under review
pursuant to this section. A copy of the report shall also be available for public
inspection at the Planning Department ten (10) calendar days prior to issuing
the waiver.

(6) Notice of final action on an application for a de Minimus waiver shall be given as
follows:

...

(c) The notice shall include the following information:

- (i) The action taken,
- (ii) The effective date and expiration date,
- (iii) Written findings,
- ~~(iv) Conditions of approval;~~
- ~~(v) Procedures of appeal if applicable.~~

Suggested Modification No. 7 (De Minimus Waivers):

Revise proposed section A315-28(E)(a) and (e) as follows:

E. Findings. De Minimus Waivers may only be issued for development that meets all of the following criteria:

(a) The proposed development is in conformance with the **certified LCP County General Plan**:

...

(e) The proposed development involves no potential for any adverse effects, either individually or cumulatively on coastal resources ~~because~~ **for reasons including, but not limited to, the following:**

- The project does not involve the presence of mechanized equipment or construction materials within 50 feet of an environmentally sensitive habitat area, or any sand area; or within 50 feet of coastal waters or streams.
- Within designated coastal view and coastal scenic areas, the project has no potential to impair visual resources.
- There is no potential for the project to block or otherwise impede the public right of access to the coast where acquired through use or by legislative authorization, and,
- The project does not require any discretionary permits.
- **The project does not have any impact on public access to coastal resources where acquired through use, legislative authorization, easements or deed restrictions.**

Suggested Modification No. 8 (Cottage Industries):

Add the following language to Section A314-12(C)(1) as follows:

...

- (n) **The cottage industry shall not significantly increase demand for, or require significant amounts of additional services including water, sewer, septic, or wastewater treatment.**

Suggested Modification No. 9 (Cottage Industries)

Add subsection (2) to revised Section A314-12(C), "Performance Standards For Cottage Industries Allowed As Appurtenant And Accessory Use" as follows:

(2) No coastal development permit is required for cottage industries that conform with the performance standards of (a)–(n) above if established in an existing, permitted residence or accessory structure. A coastal development permit will be required for a new accessory structure or enlarged residence in which such cottage industry is to be located that is not otherwise exempt from coastal development permit requirements pursuant to Title 14, California Code of Regulations Section 13250(b).

Suggested Modification No. 10 (Density Bonus):

Add as new section (F) to proposed section A314-12 as follows (and renumber following sections accordingly):

F. Procedures for Approval

A. When required by Government Code Section 65915, the County shall grant a density bonus that allows the applicant to build a minimum of 25% and a maximum of 35% more units than a property’s zoning would ordinarily allow, if the County finds:

- 1. The project is for any one of the types of residential projects described in Government Code Section 65915(b);**
- 2. The project complies with all standards set forth in Government Code Section 65915;**
- 3. The project is a housing development consisting of five or more units.**

B. In accordance with Government Code Section 65915 (g), the density bonus shall be calculated based on the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the LCP. The “otherwise maximum allowable residential density” shall mean the maximum density determined by applying all site-specific environmental development constraints applicable under the coastal zoning ordinance and land use plan certified by the Coastal Commission.

C. Any housing development approved pursuant to Government Code Section 65915 shall be consistent with all applicable certified local coastal program policies and development standards. In reviewing a proposed density increase, the County shall identify all feasible means of accommodating the density increase and consider the effects of such means on coastal resources. The County shall only grant a density increase if the County determines that the means of accommodating the density increase proposed by the applicant does

not have an adverse effect on coastal resources. If, however, the County determines that the means for accommodating the density increase proposed by the applicant will have an adverse effect on coastal resources, the County shall not grant the density increase.

D. In addition to a density bonus, the County shall grant to a housing development that complies with the provisions of Section A. above, one of the incentives or concessions identified in Government Code Section 65915(h), unless the County finds that an incentive or concession is not required in order to provide for affordable housing costs or rents. In reviewing a proposed incentive or concession, the County shall consider all feasible alternative incentives and concessions and their effects on coastal resources. The County shall only grant an incentive or concession if the County determines that the development incentive or concession requested by an applicant pursuant to this section will not have any adverse effects on coastal resources. The County may grant one or more of those incentives or concessions that do not have an adverse effect on coastal resources. If all feasible incentives or concessions would have an adverse effect on coastal resources, the County shall not grant any incentive or concession.

E. For the purposes of this section, "coastal resources" means any resource which is afforded protection under the policies of Chapter 3 of the Coastal Act, California Public Resources Code section 30200 et seq., including but not limited to public access, marine and other aquatic resources, environmentally sensitive habitat, and the visual quality of coastal areas.

Suggested Modification No. 11 (Density Bonus)

Add the following language to the definition of "Density Bonus" consistent with §65915(g)(1):

B. Definitions. Whenever the following terms are used in this Section, they shall have the meaning established by this Subsection:

...

(4) "Density Bonus" means a minimum density increase of at least 25 percent, unless a lesser percentage is elected by the applicant, over the otherwise Maximum Residential Density= under the certified LCP. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (C) of this section. For each 1 percent increase above 10 percent in the percentage of units affordable to lower

income households, the density bonus shall be increased by 1.5 percent up to a maximum of 35 percent.

Suggested Modification No. 12 (Density Bonus)

Revise Section C. Implementation, as follows consistent with §65915(b)(1)-(2):

C. Implementation. The County shall grant either: a Density Bonus, or a Density Bonus with an Additional Incentive(s), or Equivalent Financial Incentive; as set forth in Subsection 5 of this Section, to an applicant or developer of a Housing Development, who agrees to provide the following:

(1) At least ~~20~~ 10 percent of the total units of the Housing Development as Target Units affordable to Lower Income Households; or

(2) At least ~~10~~ 5 percent of the total units of the Housing Development as Target Units affordable to Very Low Income Households; or

(3) Senior citizen housing.

In determining the minimum number of Density Bonus Units to be granted pursuant to this Section, the Maximum Residential Density for the site shall be multiplied by 0.25. When calculating the number of permitted Density Bonus Units, any fractions of units shall be rounded to the next larger integer.

In determining the number of Target Units to be provided pursuant to this Section, the Maximum Residential Density shall be multiplied by ~~0.10~~ 0.05 where Very Low Income Households are targeted, or by ~~0.20~~ 0.10 where Lower Income Households are targeted. The Density Bonus Units shall not be included when determining the total number of Target Units in the Housing Development. When calculating the required number of Target Units, any resulting decimal fraction shall be rounded to the next larger integer.

In cases where a density increase of less than 25 percent is requested, no reduction will be allowed in the number of Target Units required. In cases where a density increase of more than 25 percent is requested, the requested density increase, if granted, shall be considered an Additional Incentive, as outlined in Subsection 5 of this Section.

In cases where the developer agrees to construct more than ~~20~~ 10 percent of the total units for Lower Income Households, or more than ~~10~~ 5 percent of the total units for Very Low Income Households, the developer is entitled to only one Density Bonus and an Additional Incentive(s) (or an Equivalent Financial Incentive) pursuant to Subsection 5 of this Section. Similarly, a developer who agrees to construct Senior Citizen Housing with

~~20 or 10~~ 10 or 5 percent of the units reserved for Lower- or Very Low-Income Households, respectively, is only entitled to one Density Bonus and an Additional Incentive(s). The County may, however, grant multiple Additional Incentives to facilitate the inclusion of more Target Units than are required by this Section.

Suggested Modification No. 13 (Density Bonus)

Revise Section D. Development Standards, as follows consistent with §65915(c):

D. Development Standards.

Target Units should be constructed concurrently with Non-Restricted Units unless both the County and the developer/applicant agree within the Density Bonus Housing Agreement to an alternative schedule for development.

Target Units shall remain restricted and affordable to the designated group for a period of 30 years (or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program; or rental subsidy program), ~~under the following circumstances:~~

~~===== (1) Both a Density Bonus and an Additional Incentive(s) is granted; or~~

~~===== (2) An Equivalent Financial Incentive equivalent to a Density Bonus and an Additional Incentive(s) is granted.~~

~~Target Units shall remain restricted and affordable to the designated group for a period of 10 years under the following circumstances:~~

~~===== (3) Only a Density Bonus is granted and no Additional Incentives are granted; or~~

~~===== (4) An Equivalent Financial Incentive equivalent to only a Density Bonus is granted.~~

Suggested Modification No. 14 (Density Bonus)

Revise Section E. Development Incentives, as follows consistent with §65915(d)(2)(A)-(C):

E. Development Incentives.

The County shall provide a Density Bonus and an Additional Incentive(s), for qualified Housing Developments, upon the written request of a developer, unless the County

makes a written finding that the Additional Incentive(s) is not necessary to make the Housing Development economically feasible to accommodate a Density Bonus, or unless all the required findings for approving subdivisions cannot be made.

The development incentives granted shall contribute significantly to the economic feasibility of providing the Target Units. Applicants seeking a waiver or modification of development or zoning standards shall show that such waivers or modifications are necessary to make the Housing Development economically feasible in accordance with Government Code Section 65915(e). This requirement may be satisfied by reference to applicable sections of the County's general plan housing element

The applicant shall receive the following number of incentives or concessions:

(1) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a condominium or planned development.

(2) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a condominium or planned development.

(3) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a condominium or planned development.

~~The need for incentives will vary for different Housing Developments. Therefore, the allocation of Additional Incentives shall be determined on a case by case basis. The Additional Incentives may include, but are not limited to, any of the following:~~

- (1) A reduction of site development standards or a modification of zoning code or architectural design requirements which exceed the minimum building standards provided in Part 2.5 (commencing with Section 18901) of Division 13 of the California Health and Safety Code). These may include, but are not limited to, any of the following:
 - (a) Reduced minimum lot sizes and dimensions.
 - (b) Reduced minimum yard setbacks.
 - (c) Increased maximum lot coverage.
 - (d) Increased maximum building height.
 - (e) Reduced on site parking standard; including the number or size of spaces.

- (f) Reduced minimum building separation requirements.
- (g) Reduced street standards (e.g. reduced minimum street widths).
- (2) Allow the Housing Development to include non-residential uses and/or allow the Housing Development within a non-residential zone.
- (3) Other regulatory incentives or concessions proposed by the developer or the County which result in identifiable cost reductions or avoidance.
- (4) A Density Bonus of more than 25 percent
- (5) Waived, reduced, or deferred planning, plan check, construction permit, and/or development impact fees.
- (6) Direct financial aid in the form of a loan or a grant to subsidize or provide low interest financing for on or off site improvements, land or construction costs.

The County may offer an Equivalent Financial Incentive instead of granting a Density Bonus and an Additional Incentive(s). The value of the Equivalent Financial Incentive shall equal at least the land cost per dwelling unit savings that would result from a Density Bonus and must contribute significantly to the economic feasibility of providing the Target Units pursuant to this Section.

Suggested Modification No. 15 (Density Bonus)

Revise Section G. Density Bonus Housing Agreement, as follows consistent with §65915(c)(1):

G. Density Bonus Housing Agreement.

Applicant/Developers requesting a Density Bonus, shall agree to enter into a Density Bonus Housing Agreement with the County. The terms of the draft agreement shall be reviewed and revised as appropriate by the Planning Director or designated staff, who shall formulate a recommendation to the Planning Commission for final approval.

...

The Density Bonus Housing Agreement shall include at least the following:

- (1) The total number of units approved for the Housing Development, including the number of Target Units.

...

(4) Tenure of use restrictions for Target Units of at least ~~10 or~~ 30 years, in accordance with Subsection 4 of this Section.

...

Suggested Modification No. 16 (Design Review):

Revise Section A314-57 (B) & (C) as follows:

A. Applicability. These regulations shall apply to lands designated "D" on the zoning map. ~~Solar collectors for on site use are exempt from the design review requirement of this section.~~

B. ~~Special Coastal Development Permit Required.~~ A ~~special coastal development permit is required for all development subject to these~~ regulations ~~except that~~ **development identified as "exempt" in Title 14, California Code of Regulations, sections 13250, 13252 and 13253 on lands designated "D" is exempt from the requirement for a coastal development permit, and exempt from the design review requirements of Section A314-57, unless a coastal development permit contains a condition stating that such exemptions are not available on the property.**

C. ~~The following development shall be exempt from coastal development permit requirements for design review:~~

(1) Solar collectors for on site use;

(2) ~~(1)~~ Additions to existing structures that meet the following all the criteria: ~~listed below:~~

~~(a) The addition of solar collectors for on site use;~~

(a) The addition would result in an increase of 10 percent or less of floor area to the structure. The percentage increase shall include any previous additions that have been exempted from design review pursuant to this section, and

~~(b)-(e)~~ The addition does not increase the height of the structure by more than 10 percent, and

~~(c)-(d)~~ The addition is not located on a beach, wetland, within 50 feet of a coastal bluff or coastal stream, seaward of the mean high tide line, or in a coastal scenic or coastal view area,

~~(3)-(2)~~ Installation or removal of windows, doors or siding material provided that new siding material is non-reflective.

The application for the permit shall be accompanied by a fee in the amount as established by ordinance or resolution of the Board of Supervisors.

Development exempt from coastal development permit requirements for design review shall be consistent with all other requirements of this chapter and any applicable permit.

Suggested Modification No. 17 (Special Occupancy Park)

Revise propose Section A314-34.1 as follows:

- F. Modification of Development Criteria. Modification of the development ~~criteria~~ standards ~~(A) through (D)~~ **in (C)** of this Section may be granted by the Hearing Officer subject to making the required findings for Granting Special Permit Exceptions in Chapter 5 and the findings that the development will be consistent with all applicable state and local health and safety standards, and that the development would have no adverse impact on coastal resources.

~~Modification of the development standard (E) of this Section may also be allowed with a Special Permit, provided the following supplemental findings are made: 1) the development will be compatible with surrounding land uses, and 2) the development meets minimum State standards for habitability.~~

~~To ensure the park is compatible with surrounding property uses, the Hearing Officer may limit the term of the permit to a specified time period, and may require that the caretaker of the park has specific plans and sufficient experience with anticipated users to effectively engage the cooperation of the users to maintain the park in a clean, safe and sanitary condition.~~

...

Suggested Modification No. 18 (Special Occupancy Park)

Revise Section A313-24 as follows:

Section A313-24. CRD COASTAL DEPENDENT COMMERCIAL RECREATION

A. Principal Permitted Uses.

- (1) Civic Use Type
Minor Utilities

(2) Commercial Use Type
Coastal Dependent Recreation

(3) Natural Resources Use Types
Resource-Related Recreation
Coastal Access Facilities

~~(4) Commercial Use Types
Incidental Camping Area
Tent Camp
Temporary Recreational Vehicle Park~~

B. Conditionally Permitted Uses. The following use types are permitted pursuant to the Development Permit Procedures in Chapter 5 of this Division.

(1) Residential Use Types
Single Family Residential
Caretaker's Residence

(2) Civic Use Types
...

(3) Commercial Use Types
Visitor Serving Facilities
Transient Habitation
Commercial Recreation
Recreational Vehicle Park
Incidental Camping Area
Tent Camp
Temporary Recreational Vehicle Park

...

Suggested Modification No. 19 (Planned Unit Development):

Add the following language to existing Section A314-62 (E) as follows:

E. Modifications of Development Standards. The following development standard modifications may be approved by the Planning Commission reviewing the Planned Unit Development permit applications: **only if it is determined that the means of accommodating the proposed development standard modifications would not**

have an adverse effect on coastal resources. If, however, the County determines that the means for accommodating the proposed development standard modifications proposed by the applicant would have an adverse effect on coastal resources, the County shall not grant the development standard modifications.

Suggested Modification No. 20 (Planned Unit Development):

Add the following language to proposed Section A314-62 (F) as follows:

F. Design Guidelines. These guidelines shall be considered by architects, engineers, and other persons involved in designing Planned Unit developments, and by the Planning Commission and Board of Supervisors in reviewing them. The guidelines recognize that while few people are in complete accord on what makes a well designed project, there is general agreement on a number of basic design principles, which are enumerated below. **Consideration of these guidelines does not eliminate or supercede the need to comply with all other applicable requirements of the certified LCP.**

Suggested Modification No. 21 (Second Units)

Revise Section A314-31(B) as follows:

- B. Second Residential Units Permitted With Coastal Development Permit ~~or~~ and Special Permit Use Permit. A second residential unit use type, as defined in Chapter 2, may be permitted with a coastal development permit in RS and RA zones if all the criteria of A314-31(D) are met. A second residential unit that cannot meet all the criteria in A314-31(D) may be permitted with a **coastal development permit and special permit pursuant to A314-31(G)-(J) below so long as the second unit meets the criteria of A314-31(D)(8)-(13) below.**

Suggested Modification No. 22 (Second Units)

Add the following language to Section A314-31(D):

D. Development Regulations and Standards. The following development regulations and standards shall apply to all second residential units:

...

(8) Services. The applicant shall provide evidence of adequate services to serve the second residential unit including water supply and sewage disposal.

(9) Public Access. Second residential units shall not obstruct public access to and along the coast, or public trails.

(10) Visual Resources. Second residential units shall not significantly obstruct public views from any public road, trail, or public recreation area to, and along the coast.

(11) Environmentally Sensitive Habitat Areas and Wetlands. All development associated with second residential units shall be located no closer than 100 feet from the outer edge of an environmentally sensitive habitat area or the average setback of existing development immediately adjacent as determined by the “string line method.”

(12) Agricultural Lands. All development associated with second residential units shall be prohibited on prime agricultural soils and where there are no prime soils be sited so as to minimize impacts to ongoing agriculturally-related activities.

Suggested Modification No. 23 (Second Units)

Add the following language to Section A315-16 regarding Supplemental Findings for Second Residential Units:

A. Residential Use Findings.

- (1) Second Residential Unit. The second residential unit is subordinate to the principal residence and is compatible with the character of the neighborhood, and the development is consistent with ~~general plan~~ **LCP policies regarding maintenance of open space, retention of agriculture and timber lands, and protection of the environment. the criteria of A314-31(D)(8)-(13).**

Suggested Modification No. 24

Add the following language to Section 313-2.1, CN: Neighborhood Commercial:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Neighborhood Commercial.

Suggested Modification No. 25

Add the following language to Section 313-5.1, PR: Public Recreation:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Public Recreation.

Suggested Modification No. 26

Add the following language to Section 313-5.2, CR: Commercial Recreation:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Commercial Recreation.

Suggested Modification No. 27

Add the following language to Section 313-5.3, CRD: Coastal Dependent Commercial Recreation:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Coastal Dependent Recreation.

Suggested Modification No. 28

Add the following language to Section 313-6.1, RS: Residential Single Family:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Single Family Residential use.

Suggested Modification No. 29

Add the following language to Section 313-6.2, RM: Residential Multi-Family:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Multi Family Residential.

Suggested Modification No. 30

Add the following language to Section 313-6.3, R2: Mixed Residential:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Single Family Residential.

Suggested Modification No. 31

Add the following language to Section 313-6.4, RA: Rural Residential Agriculture:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Single Family Residential.

Suggested Modification No. 32

Add the following language to Section 313-7.1, AE: Agriculture Exclusive:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is General Agriculture.

Suggested Modification No. 33

Add the following language to Section 313-7.2, TC: Commercial Timber:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Timber Production.

Suggested Modification No. 34

Add the following language to Section 313-7.3, TPZ: Timberland Commercial Zone:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Timber Production.

PART TWO: AMENDMENT DESCRIPTION AND BACKGROUND

Background

In February of 1998, the Humboldt County Board of Supervisors adopted Resolution Nos. 98-114c and 98-114d approving the proposed amendments to the Land Use Plan (i.e., six Area Plans) and the Coastal Zoning Regulations. In April of 1998, the Board of Supervisors adopted Resolution No. 98-221 transmitting the LCP amendments to the Coastal Commission for review and certification (see Attachment A).

The subject amendment, referred to as the “Housing Element Update,” is one of two parts submitted by the County. The first part, or Part “A,” involves amendments to the agricultural provisions of the LCP and is being processed separately as HUM-MAJ-1-99-A. The subject amendment involving primarily housing related issues is being processed as Part “B,” or HUM-MAJ-1-99-B.

According to the County, the goals of the proposed amendment are to (1) provide adequate sites for all types of residential development throughout the county, (2) utilize techniques and programs which would reduce costs of new residential construction, (3) encourage resource-conserving site utilization and dwelling unit construction techniques, (4) promote simplification, flexibility, and diversity of housing and zoning regulations to allow the construction or maintenance of varying types of housing developments by the public and private interests, which will provide for the housing needs of all socio-economic sectors in the community, (5) assist housing consumers and special populations groups, (6) provide for affordable housing, and (7) help the County achieve housing goals as outlined in Section 65580 of the Government Code.

The County’s amendment submittal details the extensive multi-year public involvement efforts in preparing the amendment. The County enlisted the assistance of many community organizations in writing the draft Housing Element including for example, the Humboldt County Housing Authority, Redwood Community Action Agency, Farmer’s Home Administration, and the Homeless Task Force. The County also worked closely with a 21-member citizen group known as the Citizens Advisory Committee on the Housing Element (CACHE). In addition, the County prepared an Environmental Impact Report for the Housing Element Update consistent with requirements of the California Environmental Quality Act (CEQA).

Description of Proposed LCP Amendment

The proposed Humboldt County LCP amendment stems from a comprehensive update of the Housing Element portion of the County’s General Plan, which identifies housing needs in the unincorporated areas of the County and directs the implementation of

programs to address those housing needs. According to the County, the purpose of the proposed LCP amendment is to facilitate the accommodation of current and future housing needs and to comply with State law regarding affordable housing. Accordingly, the more significant portions of the amendment include provisions allowing density bonuses pursuant to the requirements of Government Code Section 65915, increasing the existing allowable density bonus in Planned Unit Developments (PUDs) for developments with extraordinary public benefits from 20% to 25%, and allowing second units as a principal permitted use in residential and rural areas.

The proposed amendment would make changes to the six area plans of the Land Use Plan to allow for density bonuses for affordable housing projects and planned unit developments.

The amendment proposes to make a number of significant changes to the Coastal Zoning Ordinance to encourage more affordable housing and to better meet housing needs of all segments of the County's population. Accordingly, the amendment intends to encourage less expensive housing development by reducing permit requirements and development standards for certain types of development.

In brief, the proposed amendment includes as follows:

Density Bonus and Planned Unit Development (LUP)

The proposed LUP amendment would add a new section to the Introduction of the "Standards for Plan Designations" section in each of the six Area Plans that would allow for density ranges in land use designations to be exceeded (1) to encourage affordable housing pursuant to Government Code Section 65915, and (2) within Planned Unit Developments (PUD) consistent with existing PUD policies in the LCP.

De Minimus Waivers

The proposed amendment would allow the Planning Director to issue de minimus waivers for certain types of development that (1) are consistent with the zoning ordinance, and (2) involve no potential for any adverse effect, either individually or cumulatively on coastal resources or public access to coastal resources where acquired through use or legislative authorization. The amendment includes a list of development types proposed by the County for which coastal permit requirements would be waived and includes, in part: small retaining walls, demolition of non-historic structures, test wells, wetland restoration, removal of contaminated backfill, and property mergers.

Cottage Industries

The proposed amendment to the Cottage Industry provisions would (1) set forth additional performance standards for cottage industries to distinguish between cottage industries that require a coastal development permit and those that do not, and (2) move cottage industries from a conditionally permitted use to a principal permitted use in all of the zones where they are currently allowed.

Residential Density Bonus Ordinance

The proposed amendment would incorporate the density bonus provisions mandated by Government Code Section 65915 regarding affordable housing. Currently, the certified Coastal Zoning Ordinance does not contain density bonus provisions for affordable housing. As proposed, the amendment would allow a minimum 25% increase over the maximum allowable density (with fractions rounded up) when a developer agrees to construct at least 20% of the total units in a housing development for low or moderate income households or 10% of the total units for lower-income households, or to construct a senior housing project.

Design Review

The proposed amendment would (1) change the Special Permit requirement to a coastal development permit, and (2) exempt certain additions to existing structures from coastal permit and design review requirements including (1) minor additions to existing structures provided that they meet certain area and height limitations and are not located in a sensitive coastal resource area, and (2) the installation or removal of windows, doors, or siding material provided that new siding material is non-reflective.

Special Occupancy Parks

The proposed amendment would change the existing Recreational Vehicle provisions to apply to Special Occupancy Parks, which by definition include Recreational Vehicle Parks, Temporary Recreational Vehicle Parks, Incidental Camping Areas, and Tent Camps. The amendment would make changes and additions to the definitions section of the Coastal Zoning Ordinance, and other related sections, to include various changes to the definitions of commercial recreation uses (i.e., types of camping), associated changes to permitted uses in certain zoning districts, and some modifications to the criteria for approving these various uses. According to the County, the proposed zoning ordinance changes are intended to help accommodate nomadic housing consistent with State law.

Planned Unit Developments

The amendment would make changes to the provisions regarding Planned Unit Developments (PUD) to (1) increase the allowable density standard from 20% to a maximum of 25% for those developments incorporating extraordinary public benefits, (2) add additional residential density standards, and (3) provide updated and more thorough design guidelines.

Second Residential Units

The proposed amendment would (1) allow second residential units as a principal permitted use in the Residential Single Family (RS) and Rural Residential Agriculture (RA) zoning districts, (2) make changes to permit requirements and development criteria, and (3) add additional supplemental findings required to be made when approving a second residential unit.

Home Occupations

The amendment would make changes to the provisions regarding Home Occupations to allow for modifications or waivers of Home Occupation standards including location, entry access, physical alterations, and the number of employees upon obtaining a coastal development permit.

The proposed amendment also includes several minor additional changes to the Coastal Zoning Ordinance that do not raise issues of conformance of the Implementation Plan with or its adequacy to carry out and implement the Land Use Plan. These miscellaneous amendments include:

- Reducing permit requirements for caretakers apartments in commercial areas;
- Eliminating the requirement that duplexes be built side-by-side;
- Allowing parkland dedication fees for second units to be paid upon construction of the second unit;
- Clarifying when single-family homes can be allowed on multi-family zoned lots.

PART THREE: AMENDMENTS TO LAND USE PLAN

I. ANALYSIS CRITERIA

The standard of review for the proposed amendment to the Land Use Plan (LUP) portion of the Humboldt County LCP is the Chapter 3 policies of the Coastal Act.

As submitted, the proposed LUP amendment is not consistent with the policies of the Coastal Act. If modified as suggested, the LUP would be consistent with the Chapter 3 policies of the Coastal Act.

II. FINDINGS FOR DENIAL OF LAND USE PLAN AMENDMENT NO. HUM-MAJ-1-99-B AS SUBMITTED AND CERTIFICATION IF MODIFIED

The Commission finds and declares as following for LCP Amendment No. HUM-MAJ-1-99-B:

1. DENSITY BONUS AND PLANNED UNIT DEVELOPMENTS

a. Amendment Description

The proposed LUP amendment would add a new section to the Introduction of the “Standards for Plan Designations” section in each of the six Area Plans that comprise the County’s Land Use Plan. The proposed amendment would (1) allow for density ranges in land use designations to be exceeded to encourage affordable housing pursuant to Government Code Section 65915, and (2) increase from 20% to 25% an existing residential density bonus for Planned Unit Development (PUD) projects that are designed to provide extraordinary public benefits. The amended language would also allow a variety of housing types and a mixture of residential and commercial uses to encourage the development of affordable housing and the provision of extraordinary public benefits within planned unit developments. Specifically, all six area plans would be identically amended to add the following proposed language in the respective “Standards for Plan Designations” Introduction sections of each area plan (language proposed to be added by the County is shown in underline):

DENSITY BONUSES AND PLANNED UNIT DEVELOPMENTS

Density ranges described in land use designations may be exceeded to encourage affordable housing production pursuant to §65915 of the California Government Code (Density Bonuses). Density ranges may also be exceeded within Planned Unit Development (PUD’s). Also a variety of housing types and a mixture of residential and commercial uses may be allowed to encourage affordable housing production under the provisions of State law referenced above, and in PUD’s to encourage the provision of extraordinary public benefits within subdivisions.

b. Relevant Coastal Act Policies

Coastal Act Section 30108.5

“Land use plan” means the relevant portion of a local government’s general plan, or local coastal element which are sufficiently detailed to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of implementing actions.

Coastal Act Section 30240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would

significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Coastal Act Section 30233

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland; provided, however, that in no event shall the size of the wetland area used for such boating facility, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, be greater than 25 percent of the total wetland area to be restored.
- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities.
- (5) Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- (7) Restoration purposes.
- (8) Nature study, aquaculture, or similar resource-dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge soils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of

the wetlands or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

Coastal Act Section 30250

(A) New development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

Coastal Act Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

c. Analysis

The proposed LUP amendment raises an issue of consistency with the Coastal Act in that as proposed, it is not sufficiently detailed to indicate the intensity of land use allowable as a result of density increases for affordable housing and planned unit developments.

Affordable Housing Density Bonus

The proposed amendment would include a provision in the County's LUP to provide the density bonus allowances pursuant to Government Code Section 65915 for affordable housing, which would be further implemented by the County's Coastal Zoning Ordinance as proposed to be amended as discussed in Part Four (II)(3) below. Currently, the Land Use Plan includes policies that state that housing opportunities for persons of low and moderate income shall be protected, encouraged, and provided, where feasible. However, the existing LUP has no explicit provision for density bonuses for affordable housing.

Government Code Section 65915 requires local governments to provide residential density increases to developers who agree to develop low-income and senior housing. The statute currently requires that local governments grant a density bonus of at least a 20% increase over the maximum allowable density when a developer agrees to construct at least 10% of the total units in a housing development for lower-income households, or 5% for very low income households, or to construct a senior housing project. The density bonus further rises up to 35% if more than the above-stated minimums of affordable housing are provided. For example, the current land use plan has a Medium Density Residential district with a prescribed gross density of 8 to 30 units per acre. With application of the density bonus provisions, an affordable housing project in this district could be approved with a density of up to 36 to 41 units per acre (i.e., 20-35% increase above 30 units). Government Code Section 65915(b) also requires local governments to grant at least one other incentive, in addition to the density bonus, unless the local government finds that the additional incentive is not necessary to allow for affordable housing. The Commission notes that Government Code Section 65915 has been amended since the County submitted the subject LCP amendment, resulting in various discrepancies among target unit and bonus percentages in the proposed amendment and Code requirements.

Coastal Act Section 30108.5 defines a “land use plan” as being, “...*sufficiently detailed to indicate the kinds, location, and intensities of land uses...*” As submitted, the LUP amendment does not specifically quantify the maximum allowable land use density for affordable housing, thereby resulting in potentially variable ultimate land use intensities and potential inconsistencies with land use plan resource protection policies. With a general reference to Government Code Section 65915 as proposed, should the requirements of the Code change in the future, it would leave the LUP open to interpretation and subject to change in a manner that may not be consistent with Coastal Act Section 30108.5 and without review by the Commission. For example, if the Government Code were to be amended in the future to allow a maximum density bonus of 50%, the LUP could be interpreted to automatically incorporate this change in the County’s coastal zone without the need for further land use plan amendments. As a result, the amendment as proposed leaves what may be ultimate densities unclear and potentially without future Coastal Commission review.

The Commission therefore finds that the proposed LUP amendment as submitted is inconsistent with the Section 30108.5 in that it does not sufficiently detail the intensity of land use with regard to the maximum allowable density bonus for affordable housing and must be denied. The Government Code currently requires local governments to provide at least a 20% density increase and allows up to a 35% density increase when additional affordable units are provided. The County is proposing a minimum 25% increase over density ranges, but does not specify a maximum allowable density increase. Therefore, the Commission attaches Suggested Modification No. 1 below that would modify the proposed LUP language to specifically state the minimum 25% and maximum 35%

allowable density increase consistent with the reference to the current Government Code section. As modified by Suggested Modification No. 1 below, the LUP amendment could be found to be consistent with Section 30108.5 of the Coastal Act and could be approved.

The County's proposed LUP amendment, as submitted, that would include provisions for a residential density bonus does not indicate how density increases and development incentives would be applied consistent with the resource protection policies of the Coastal Act.

As discussed above, Government Code Section 65915(b) requires local governments to grant developers of affordable housing not only a density bonus, but also at least one of the concessions or incentives identified in Section 65915(h) unless the local government finds that the additional concession or incentive is not required to make the development economically feasible. However, Government Code Section 65915 does not indicate how a local government is to choose which incentive to provide. Therefore, the type of incentive to grant is discretionary under the Government Code. Additionally, the Government Code does not specify how the density bonus is to be accommodated. Similarly, how the density increase is accommodated and whether to provide an increase beyond 20% are within the local government's discretion.

The means of accommodating the density bonus and development incentives are not specifically laid out by the proposed LUP amendment. The County's proposed residential density bonus language does not explicitly include incentives for affordable housing that rest on the relaxation of development standards intended to protect coastal resources. In other words, the County has not specifically proposed to encourage affordable housing by allowing construction in or near sensitive coastal resource areas where residential development would ordinarily be prohibited by other policies of the LCP. As development incentives would be determined on an individual project basis, and because the policies allow for County discretion in considering which incentives to grant, the proposed LUP amendment could be implemented in a manner inconsistent with resource protection provisions of the Coastal Act. For example, the proposed policy language could be interpreted as allowing otherwise prohibited fill of a wetland to accommodate an increase in residential density. Therefore, the proposed LUP amendment would not be consistent with the Chapter 3 policies of the Coastal Act.

Government Code Section 65915 was specifically amended in 2002 to include subsection (m) that states, "*Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coast Act (Division 29 commencing with Section 30000) of the Public Resources Code.*" Therefore, although the Government Code requires local governments to provide certain density bonus and development incentives to encourage affordable housing, the County may not grant such bonuses or incentives if they would result in adverse impacts to coastal resources. For example, if it is determined that the density bonus could be accommodated only by filling

coastal wetlands, or by reducing buffer widths needed to protect environmentally sensitive habitat areas in a manner that would lessen the effect of LCP policies intended to protect such resources, the density increase could not be granted.

Therefore, to ensure that that the means of accommodating the density bonus standards of Government Code Section 65915 would not have adverse impacts on coastal resources, and would be consistent with the Chapter 3 policies of the Coastal Act, the Commission attaches Suggested Modification No. 1. The modification would require the County to identify all feasible means of accommodating the density increase with specific consideration toward the effects of such means on coastal resources when reviewing a proposed density increase. The County shall only grant a density increase if it is determined that the means of accommodating the density increase proposed by the applicant would not have an adverse effect on coastal resources. If, however, the County determines that the means for accommodating the density increase proposed by the applicant would have an adverse effect on coastal resources, the County shall not grant the density increase.

Planned Unit Development

The existing LUP includes an identical policy in each of the six area plans that encourages the Planned Unit Development concept and provides for an increase of up to 20% over planned densities when extraordinary benefits to the community and the County are provided such as dedication of open space and public access, protection of visual resources and sensitive habitats, and provision of low and/or moderate income units. A Planned Unit Development is defined by the LCP as, "*a development which, on an individual parcel, permits variable parcel sizes but an overall density consistent with the gross densities permitted in the Area Plan in order to provide development compatible with environmental, geologic or topographic features of a parcel.*" The planned unit development provisions of the LUP are implemented by corresponding policies in the Coastal Zoning Ordinance.

Similar to the density bonus discussion above, the proposed new introductory language of the LUP amendment is also silent as to the maximum allowable density for planned unit developments. The proposed new introductory language simply states that density ranges may be exceeded, but without sufficient detail to indicate the allowable intensity of land use. For clarity, the proposed new introductory language on PUDs in the LUP should specify the maximum density bonus that would be allowed.

Existing PUD policies elsewhere in the currently certified LUP, and in the IP, do specify that a 20% density bonus is allowed when a PUD provides extraordinary public benefits and adding similarly detailed language to the proposed new introductory language of the LUP regarding PUDs would clarify the new language and make it sufficiently detailed to be consistent with Section 30108.5 of the Coastal Act. However, the 20% bonus is no

longer the maximum amount of PUD residential density bonus that the County intends to apply to the PUDs. The proposed Implementation Plan amendment, discussed in Section Four(II)(6) below, proposes to increase the allowable density bonus from 20% to 25% in planned unit developments that meet certain criteria, even though a similar change to the LUP is not proposed, presumably by oversight.

Therefore, as the IP is proposed to be amended from 20% to 25%, modifying the proposed LUP language to specifically include the 25% maximum allowable density increase is appropriate to achieve consistency between the LUP and the IP and to be sufficiently detailed to indicate the intensity of land use for planned unit developments consistent with Coastal Act Section 30108.5. Suggested Modification No. 1 below would specify the maximum allowable density increase for planned unit developments in the proposed new LUP section. Suggested Modification No. 1 would also include a statement that reflects proposed IP language noting that the 25% density bonus limit for PUDs is the maximum density bonus permitted and that it may not be combined with any other density bonus allowed by County or State regulations if densities greater than 25% would result.

As the decision of whether or not to approve a density increase for PUDs is left to the discretion of the County with minimal approval criteria, the proposed amendment could be implemented in a manner inconsistent with Chapter 3 policies of the Coastal Act. For example, the policy could be interpreted as allowing otherwise prohibited fill of a wetland to accommodate a density increase if the developer enhances sensitive habitats elsewhere as an extraordinary public benefit. Therefore, as submitted, the LUP amendment is not consistent with Chapter 3 policies of the Coastal Act and must be denied.

If modified, the proposed LUP amendment could be found consistent with the Coastal Act. To ensure that the LUP amendment is consistent with the resource protection policies of the Coastal Act, Suggested Modification Nos. 1 and 2 would clarify that the residential density increase shall only be approved if it is determined that the means of accommodating the proposed development standard modifications would not have an adverse effect on coastal resources and would be consistent with all applicable local coastal program policies and development standards.

Additionally, Suggested Modification No. 2 below would change the existing references to the maximum allowable density increase in planned unit developments from 20% to 25%, consistent with the proposed changes to the new introductory language of the LUP amendment regarding PUDs as modified.

In conclusion, the Commission finds that the proposed land use plan amendment is deficient in not explicitly quantifying the maximum allowable density bonus percentage for affordable housing and planned unit developments and in failing to include provisions that ensure that density bonus provisions will be implemented in a manner that is fully

protective of coastal resources consistent with the coastal resource protection policies of the Coastal Act. Therefore, the Commission finds that the proposed LUP amendment as submitted is not consistent with the Coastal Act and must be denied. However, the Commission finds that if the LUP amendment were modified according to Suggested Modification No. 1 below to explicitly state the maximum allowable density increases and include language limiting the application of the density bonus in a manner that would not have an adverse effect on coastal resources, and by Suggested Modification No. 2 to ensure consistency between the LUP and IP, the LUP amendment would be consistent with the Chapter 3 policies of the Coastal Act.

c. **Suggested Modifications**

Suggested Modification No. 1 (Density Bonus and Planned Unit Development):

Modify the following language proposed by the County as new Section 5.15 in the Eel River, South Coast, McKinleyville, and North Coast Area Plans, as new Section 4.15 in the Trinidad Area Plan, and as a new paragraph to existing Section 4.10 in the Humboldt Bay Area Plan with modifications as follows:

DENSITY BONUSES AND PLANNED UNIT DEVELOPMENTS

Density ranges described in land use designations may be exceeded **by a minimum of 25% and a maximum of 35%** to encourage affordable housing production pursuant to §65915 of the California Government Code (Density Bonuses) **in effect in 2005. Any housing development approved pursuant to Government Code Section 65915 shall be consistent with all applicable certified local coastal program policies and development standards. In reviewing a proposed density increase, the County shall identify all feasible means of accommodating the density increase and consider the effects of such means on coastal resources. The County shall only grant a density increase if the County determines that the means of accommodating the density increase proposed by the applicant does not have an adverse effect on coastal resources. If, however, the County determines that the means for accommodating the density increase proposed by the applicant will have an adverse effect on coastal resources, the County shall not grant the density increase.** Density ranges may also be exceeded within Planned Unit Development (PUD's) **up to 25% if increasing the density would not have an adverse effect on coastal resources and would be consistent with all applicable local coastal program policies and development standards. The 25% density bonus limit for PUDs is the maximum density bonus permitted; it may not be combined with any other density bonus allowed by County or State regulations if densities greater than 25% would result.** Also a variety of housing types and a mixture of residential and commercial uses may be allowed to encourage affordable housing production under the provisions of State law referenced above, and in PUD's to encourage the provision of extraordinary public benefits within subdivisions.

Suggested Modification No. 2 (Planned Unit Development):

Add the following language to the Planned Unit Development sections of the six Area Plans:

D. PLANNED UNIT DEVELOPMENT

2. It shall be the policy of the County to encourage the Planned Unit Development (PUD) concept. Where such utilization would provide extraordinary benefits to the community and to the County, such as: dedications of open space and public access, protection of visual resources and sensitive habitats beyond that already required in Sections 3.41 and 3.42, incentives may include increases of up to ~~20%~~ **25%** over planned densities **if increasing the density would not have an adverse effect on coastal resources and would be consistent with all applicable local coastal program policies and development standards. The 25% density bonus limit for PUDs is the maximum density bonus permitted; it may not be combined with any other density bonus allowed by County or State regulations if densities greater than 25% would result.**

PART FOUR: AMENDMENTS TO IMPLEMENTATION PROGRAM

I. ANALYSIS CRITERIA

The standard of review for the proposed amendment to the Implementation Plan (IP) of the Humboldt County LCP is whether the IP, as amended, conforms with and is adequate to carry out the certified LUP, as amended and modified herein. For the reasons discussed in the findings below, the proposed amendment to the Implementation Program is not consistent with or adequate to carry out the certified Land Use Plan. As modified, the proposed amendment to the IP would conform with and be adequate to carry out the LUP as amended with suggested modifications by Humboldt County LCP Amendment No. 1-99-B.

II. FINDINGS FOR DENIAL OF IP AMENDMENT NO. HUM-MAJ-1-99-B AS SUBMITTED AND CERTIFICATION IF MODIFIED

The Commission finds and declares as following for IP Amendment No. HUM-MAJ-1-99-B:

1. DE MINIMUS COASTAL PERMIT WAIVER

a. Amendment Description

The County proposes an amendment to the Coastal Zoning Ordinance that would add procedures for issuing de minimus coastal permit waivers for certain types of development. Currently, the County issues coastal development permits through a regular hearing process or an administrative process. The proposed amendment would allow the Planning Director to issue de minimus waivers for certain types of development that (1) is consistent with the zoning ordinance, and (2) involves no potential for any adverse effect, either individually or cumulatively on coastal resources or public access to coastal resources where acquired through use or legislative authorization. The amendment includes a list of development types proposed by the County for which coastal permit requirements would be waived and includes, in part: small retaining walls, demolition of non-historic structures, test wells, wetland restoration, removal of contaminated backfill, and property mergers.

The proposed amendment also sets forth procedures and findings necessary to issue a de minimus waiver. As proposed, among the findings that would have to be made are that the development is: (1) in conformance with the General Plan; (2) consistent with the zoning regulations; (3) not detrimental to public health, safety and welfare; (4) outside of coastal resource areas; and (5) not appealable to the Coastal Commission, or within an area of the Commission's retained permit jurisdiction. If a development meets the criteria and the findings can be made, the Planning Director would issue a de minimus waiver. The proposed provisions also include application and noticing procedures. Additionally, the County's proposed language provides that if any referral agency, member of the Planning Commission, or Coastal Commission, or any member of the public requests that the waiver not be issued, the applicant would be advised that a coastal development permit is required if the applicant wishes to proceed with the development.

b. Analysis

Coastal Act Section 30624.7 and its implementing regulations, Section 13238, contain the procedures for the waiver of some coastal permit requirements for development that is de minimus. A de minimus project is defined as a development that involves no potential for any adverse effect, either individually or cumulatively, on coastal resources and that is consistent with the policies of Chapter 3 of the Coastal Act and the certified LCP. The provisions of the Coastal Act and the regulations regarding de minimus waivers prohibit local governments from issuing waivers for development which is appealable under Section 30603 of the Coastal Act, or where the Commission retains permit authority.

The ability to waive some permit procedures under certain conditions can help minimize effort of the local government and streamline permit processes on projects of a very minor nature in locations where coastal resources would not be affected by any potential individual or cumulative impacts. However, waivers do not eliminate the requirements of the Coastal Act to provide public participation in such decisions and thus, local governments must still provide the minimum notice and written findings stating the basis of the waiver.

The de minimus waiver provisions proposed by the County resemble those found in Coastal Act Section 30624.7 and are generally consistent with guidance provided by Commission staff to local governments regarding drafting ordinances to streamline LCP permit procedures (*Local Assistance Notes, May 1988, Number 4*). The provisions proposed by the County include adequate procedures for noticing a de minimus permit application, providing public comment, and preparing a notice of final action. Additionally, the County's proposed language provides that if any referral agency, member of the Planning Commission, or Coastal Commission, or any member of the public requests that the waiver not be issued, the applicant would be advised that a coastal development permit is required if the applicant wishes to proceed with the development. Thus, a mechanism would be in place for the Coastal Commission and the public to object to the processing of particular coastal development permit applications as de minimus waivers if the Commission believes that an application does not meet the criteria for a de minimus waiver (i.e., if the Commission believes it would have adverse impacts either individually or cumulatively on coastal resources or would be inconsistent with the certified LCP).

However, there are some inconsistencies between the language of the proposed provisions and the requirements of the Coastal Act regarding de minimus waiver definitions, procedures, and processes. As proposed, the amendment would allow some development projects that have potential adverse impacts on coastal resources and/or are not consistent with the certified LCP to be granted de minimus waivers. Therefore, the proposed amendment as submitted is not consistent with Section 30624.7 of the Coastal Act and does not conform with and carry out various resource protection policies of the LUP as modified that protect coastal resources from the impacts of development and must be denied. However, the Commission finds that with certain suggested modifications, as shown in detail in section (b) below, to ensure consistency with the proposed de minimus waiver provisions of the Coastal Act and to ensure internal consistency within the proposed provisions, the Implementation Plan amendment would be consistent with Section 30624.7 of the Coastal Act and conform to and carry out the policies of the LUP, as modified.

Suggested Modification No. 4 would modify the proposed definition of "de minimus waiver" to clarify that development considered to be de minimus must be consistent with the certified LCP, not only the zoning ordinance as stated by the proposed language. This modification would ensure that a de minimus waiver is not granted for a coastal

development that is inconsistent with a policy of the certified LUP that is not expressly reflected in a standard of the zoning ordinance. In such a situation, the proposed development might arguably be consistent with the zoning ordinance, and thus waivable under the proposed language of the IP amendment, even though the development is inconsistent with the LUP. Suggested Modification No. 5 would revise proposed language regarding the applicability of the de minimus waiver provisions to clarify that de minimus projects are those that involve no potential for any adverse effects, either individually or cumulatively, on coastal resources, including public access to coastal resources, and that are consistent with the certified LCP. As submitted, the proposed amendment does not include language limiting the applicability of the de minimus waivers not only to projects without potential adverse impacts on coastal resources, but to those projects that are consistent with the certified LCP as well.

Additionally, Suggested Modification No. 5 would modify the proposed section that outlines specific types of development that would qualify for processing as a de minimus waiver. Although many developments of the kinds listed would not have adverse impacts and would be fully consistent with the LCP, several types of development listed by the County, such as wetland restoration and removal of contaminated backfill and materials, do in fact have the potential for adverse impacts to coastal resources. For example, wetland restoration is a type of development that by its nature often requires numerous specific special conditions regarding methods and monitoring to ensure its success at restoring coastal wetlands without resulting in adverse impacts to water quality or sensitive species. Similarly, the removal of contaminated backfill and contaminated materials has the potential for adverse impacts to coastal resources, such as water quality or habitat destruction, if the methods of removal and disposal are not carefully considered and conditioned. Because these types of development as proposed would almost always require special conditions to ensure that no adverse impacts to coastal resources occur, and to ensure consistency with the certified LCP, they would not qualify for processing as a de minimus waiver, and therefore, are not appropriate to be listed as types of de minimus development. Suggested Modification No. 5 would delete these development types from the County's proposed list of development types that could be considered de minimus.

Suggested Modification No. 6 below would delete references to conditions of approval and procedures of appeal in the section outlining requirements of notices of intent to issue de minimus waivers and notices of final action. By definition, de minimus development has no potential for adverse impacts either individually or cumulatively, and therefore, does not require conditions of approval. If it is determined that a particular proposed development does require special conditions to ensure protection of coastal resources, the development would not qualify for processing as a de minimus waiver, and a regular coastal development permit would be required. Similarly, by definition, the de minimus waiver provisions do not apply to appealable development. Therefore, deleting reference to conditions of approval and procedures of appeal would ensure that the de minimus

waiver provisions are internally consistent with the definition and criteria of de minimus development.

Lastly, Suggested Modification No. 7 below would make revisions to the proposed section outlining the required findings for de minimus waivers. The modifications would clarify that the proposed development must be in conformance with the certified LCP, rather than the County General Plan as suggested by the proposed language. The certified LCP is the standard of review for coastal development permit applications, not the general plan which includes many policies that have not been reviewed and certified by the Commission. Additionally, Suggested Modification No. 7 would add language to clarify that while proposed de minimus development may be found to have no potential for any adverse effects on coastal resources, including public access to coastal resources, for reasons listed by the County, such a determination is not limited to those reasons specifically listed. In other words, just because a development does not have adverse impacts on coastal resources for the reasons listed in the proposed amendment does not mean that the project does not have adverse impacts on coastal resources. There may be other reasons why a project would adversely affect coastal resources and the Planning Director should not be limited to only reviewing certain aspects of a proposed development in determining whether the proposed development could have adverse impacts on coastal resources and could be granted a de minimus waiver. Such reasons should be considered and included in the findings of approval.

In conclusion, as submitted, the zoning ordinance amendment regarding de minimus waivers is not fully consistent with the provisions of Coastal Act Section 30624.7 for implementing procedures for reviewing and approving de minimus development and does not conform with and carry out the resource protection policies of the LUP as modified and must be denied. However, if modified with the suggested modifications below, the Implementation Plan amendment would be consistent with the provisions of Coastal Act Section 30624.7 and would conform to and carry out the LUP, as modified.

d. Suggested Modifications

Suggested Modification No. 4 (De Minimus Waivers)

Revise the proposed definition of De Minimus Waiver as follows:

De Minimus Waiver. The waiver of some coastal development permit requirements for development that 1) is consistent with the **certified LCP zoning ordinance**, and 2) involves no potential for any adverse effect; either individually or cumulatively on coastal resources or public access to coastal resources where acquired through use, ~~or~~ legislative authorization, **easements or deed restrictions**.

Suggested Modification No. 5 (De Minimus Waivers)

Revise proposed Section A315-28 as follows:

Section A315-28 DE MINIMUS WAIVERS FROM PERMIT REQUIREMENTS

A. Applicability. The procedural requirements of this chapter may be waived by the Planning Director to simplify the review of small projects that **involve no potential for any adverse effects, either individually or cumulatively, on coastal resources and that are consistent with the certified LCP.** ~~will have no adverse impacts on coastal resources.~~

B. Criteria for Waiver of Procedures.

The procedural requirements of this Chapter may be waived by the Planning Director to allow the following development:

Construction of retaining walls less than 4 feet in height with a maximum surface area of 100 square feet,

Demolition of non-historic structures,

Placement of private test water supply wells,

"One for one" replacement or abandonment of minor utilities,

Repair and replacement work associated with underground and above ground storage tanks,

~~Wetland restoration,~~

~~Removal of contaminated backfill and contaminated soil,~~

Installation of monitoring wells, vadose wells, temporary well points, and vapor points, and

Merger of property.

Suggested Modification No. 6 (De Minimus Waivers):

Revise proposed Section A315-28(D)(5) and (6) as follows:

(5) At the time a Notice of Intent To Issue A de Minimus Waiver is provided to the public, the Planning Director shall also report to the referral agencies and each Planning Commission member the project description, recommended action, ~~conditions of approval,~~ and findings for each project under review pursuant to this section. A copy of the report shall also be available for public

inspection at the Planning Department ten (10) calendar days prior to issuing the waiver.

(6) Notice of final action on an application for a de Minimus waiver shall be given as follows:

...

(c) The notice shall include the following information:

- (i) The action taken,
- (ii) The effective date and expiration date,
- (vi) Written findings,
- ~~(vii) Conditions of approval;~~
- ~~(viii) Procedures of appeal if applicable.~~

...

Suggested Modification No. 7 (De Minimus Waivers):

Revise proposed section A315-28(E)(a) and (e) as follows:

E. Findings. De Minimus Waivers may only be issued for development that meets all of the following criteria:

(a) The proposed development is in conformance with the **certified LCP County General Plan**;

...

(e) The proposed development involves no potential for any adverse effects, either individually or cumulatively on coastal resources ~~because~~ **for reasons including, but not limited to, the following:**

- The project does not involve the presence of mechanized equipment or construction materials within 50 feet of an environmentally sensitive habitat area, or any sand area; or within 50 feet of coastal waters or streams.
- Within designated coastal view and coastal scenic areas, the project has no potential to impair visual resources.

- There is no potential for the project to block or otherwise impede the public right of access to the coast where acquired through use or by legislative authorization, and,
- The project does not require any discretionary permits.
- **The project does not have any impact on public access to coastal resources where acquired through use, legislative authorization, easements or deed restrictions.**

2. **COTTAGE INDUSTRIES**

a. **Amendment Description**

The County proposes an amendment to the Cottage Industry provisions of the Coastal Zoning Ordinance that would (1) set forth additional performance standards for cottage industries to distinguish between cottage industries that require a coastal development permit and those that do not, and (2) move cottage industries from a conditionally permitted use to a principal permitted use in all of the zones where they are currently allowed. Cottage industries are defined in the County's LCP as "*establishments primarily engaged in the on-site production of goods by hand manufacturing which involves only the use of hand tools or domestic mechanical equipment or a single kiln, and the incidental direct sales to consumers of only those goods produced on-site.*"

Currently, cottage industries are a conditionally permitted use in the Commercial Neighborhood (CN), Residential Single Family (RS), Mixed Residential (R2), Rural Residential Agriculture (RA), Agriculture Exclusive (AE), Commercial Timber (TC), and Timberland Production (TPZ) zoning districts and are subject to a few performance standards such as: limiting the total land area occupied by the cottage industry to two acres, limiting the sale of merchandise on site to that related to the industry, allowing one sign attached to the structure, and limiting the number of employees and hours of operation through permit conditions.

The proposed amendment would move cottage industries from a conditionally permitted use to a principally permitted use within all of the zoning districts where they are currently allowed (i.e., CN, RS, R2, RA, AE, TC, and TPZ zoning districts) and would distinguish between those cottage industries allowed as an "appurtenant and accessory use" and cottage industries allowed as an "accessory use with a coastal development permit" based on respective performance standards. The amendment would limit the existing performance standards that currently apply to all cottage industries to apply only to those cottage industries allowed as an accessory use with a coastal development permit. A new section of more stringent performance standards would be added to apply to cottage industries that are allowed as an "appurtenant and accessory use," presumably without a coastal development permit. These proposed performance standards include limitations regarding: total floor area, structural, electrical, and plumbing alterations,

ambient noise levels, lighting, traffic levels, and perceptible vibrations. This set of standards also requires that the dwelling on the site be occupied by the owner of the cottage industry, that no persons other than residents of the dwelling be employed to conduct the cottage industry, and that the cottage industry not be evident in the external appearance of the dwelling or premises. Both sets of performance standards would also be amended to prohibit on-site sales and require that a business license be obtained for the cottage industry.

b. Relevant LUP/Coastal Act Policies

The certified LUP directly incorporates a number of Chapter 3 policies of the Coastal Act, including sections 30250(a), 30251, and 30240. These policies are as follows:

LUP/Coastal Act Policy 30250(a)

New development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

LUP/Coastal Act Policy 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

LUP/Coastal Act Policy 30240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

LUP/Coastal Act Policy 30106

“DEVELOPMENT” – means, on land, in or under water, the placement or creation of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid or thermal waste; grading, removing, dredging, mining or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66-410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition or alteration of the size of any structure, including any facility of any private, public or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z’berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

c. Analysis

The proposed amendment as submitted raises issues with its ability to conform with and carry out the LUP with regard to (1) coastal permit requirements, (2) provision of adequate public services, (3) protection of visual resources, and (4) protection of environmentally sensitive habitat areas.

Coastal Development Permit Requirements/ Adequate Public Services

The proposed amendment would allow cottage industries to be considered as principally permitted appurtenant and accessory uses to the residential use in the above noted zoning districts. As a principal permitted use rather than a conditionally permitted use, cottage industries would no longer be automatically appealable to the Coastal Commission pursuant to Coastal Act Section 30603(a)(4). However, those proposed cottage industries constituting development that require a coastal development permit pursuant to the Coastal Act and the Commission’s regulations that would be located in the geographic appeal areas specified in Section 30603 of the Coastal Act would still be appealable to the Commission. These geographic appeal areas include those areas located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within one hundred feet of any wetland or stream, or within three hundred feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area. Thus, permits for those cottage industries in locations most likely to raise concerns about impacts to coastal resources would remain appealable to the Commission.

Distinguishing between performance standards that apply to cottage industries “allowed as appurtenant and accessory uses” and those that are allowed as an “accessory use with a coastal development permit” as proposed, implies that certain low-impact cottage industries internal to owner-occupied homes that meet the criteria outlined in the performance standards for appurtenant and accessory uses do not require a coastal development permit. However, this determination is not explicit in the proposed text and therefore, could lead to interpretation problems as to which cottage industries require coastal permits and which do not. In addition, proposed cottage industries that involve the addition to an existing structure or the installation of a new detached structure in many cases would in fact, involve development that is not exempt from coastal development permit requirements under the Coastal Act and the Commission’s regulations, and the County’s proposed amendment indicating that no such permits would be required would conflict with the Coastal Act and the Commission’s regulations. Furthermore, the Commission finds that even cottage industries that operate completely internal to an existing residence could be development requiring a coastal development permit if the development increases the intensity of use by significantly increasing the demand for services including water and septic systems. Therefore, the proposed Implementation Plan amendment would not be consistent with coastal development permit requirements of the Coastal Act and must be denied. However, the Commission finds that the amendment could be modified to be made consistent with Coastal Act requirements and certified if so modified.

Coastal development permits are required for all “development,” which is defined by Section 30106 of the Coastal Act and incorporated into the County’s LUP as follows:

“on land, in or under water, the placement or creation of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid or thermal waste; grading, removing, dredging, mining or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66-410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition or alteration of the size of any structure, including any facility of any private, public or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z’berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).”

Section 30610(a) of the Coastal Act exempts certain additions to existing single family residential structures from coastal development permit requirements. Pursuant to this exemption, once a house has been constructed, certain additions and accessory buildings

that the applicant might propose in the future are normally exempt from the need for a permit or permit amendment.

To avoid such impacts to coastal resources from the development of otherwise exempt additions to existing homes, Section 30610(a) requires the Commission to specify by regulation those classes of development that involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of regulations. Section 13250 generally exempts strictly interior modifications of existing structures from coastal permit requirements. As proposed, the performance standards limit the use to no more than 25% or 1,000 square feet (whichever is less) of the floor area of the dwelling or accessory structure and do not allow persons other than the residents of the dwelling to be employed to conduct the cottage industry. The proposed performance standards are generally restrictive enough to ensure protection of coastal resources and, as an internal use, would generally meet the criteria for a use that is exempt from coastal permit requirements. However, as proposed, the performance standards could conflict with Section 13250 of the Commission's regulations. Section 13250 exempts some proposed detached residential structures and some exterior modifications to existing single-family homes from coastal development permit requirements, but not all. For example, significant non-attached residential accessory structures located between the first through public road and the sea and other improvements located within 50 feet of a coastal bluff or within a wetland or ESHA are not exempt.

To ensure that the cottage industry zoning amendment does not include language that exempts all proposed new accessory structures or additions to residences proposed to accommodate proposed new cottage industry uses from coastal development permit requirements in conflict with the provisions of Section 30610 of the Coastal Act and Section 13250 of the Commission's regulations, the Commission attaches Suggested Modification No. 9. Among other things, the suggested modification would modify the proposed language for cottage industries to be allowed as appurtenant and accessory uses to clarify that a coastal development permit will be required for a new accessory structure or enlarged residence that is proposed to accommodate a proposed new cottage industry if the proposed new structure or addition is not otherwise exempt from coastal development permit requirements under Section 13250 of the Commission's regulations.

To avoid interpretation problems as to which cottage industries require coastal development permits and which do not, Suggested Modification No. 9 would clarify that only those cottage industries that are established in an existing permitted residence or accessory structure and that meet all of the performance standards for cottage industries allowed as an "appurtenant and accessory use" do not require a coastal development permit.

As noted above, certain cottage industries that do not require new additions or accessory structures and are internal to existing residences may nonetheless constitute development as a change in the intensity of use. For the most part, the proposed ordinance language limits the kinds of cottage industries that could be approved without a coastal development permit as appurtenant and accessory structures to exclude those cottage industries that would constitute a change in the intensity of use. However, the proposed standards do not address those proposed cottage industries that would in fact constitute changes in the intensity of use of land and thus “development” by significantly increasing the need for public services, such as water. As noted above, the performance standards prohibit employees other than residents of the dwelling to conduct the cottage industry, which would largely limit the need for increased services. However, depending on the type of industry proposed, certain activities could significantly increase the use of water, reflecting a significant intensification of use of the building where the cottage industry is located and hence constitute “development” that could be inadvertently allowed without the need to secure a coastal permit and without being evaluated for its effects on coastal resources. For example, an industry involving the production of food or beverage products, or a plant nursery, which generally require significant volumes of water, if located outside of a municipal water district service area or an area with marginal well water, could significantly increase the consumption of water. Over-taxing wells for such uses could lead to drawdown of an aquifer, which could adversely affect wetlands that rely on groundwater as their water source.

Therefore, the Commission attaches Suggested Modification No. 8 to add an additional performance standard requiring that the cottage industry not significantly increase the need for services. Thus, a cottage industry that meets the performance standards outlined in Section A314-12(C), as modified, would not be considered development for purposes of coastal permit requirements. Those cottage industries that do not meet all of the performance standards of Section A314-12(C) would be subject to the performance standards of Section A314-12(D) and would require a coastal development permit, which would require evaluation of the proposed cottage industry for conformance with all relevant policies of the LCP, including those policies requiring that approved development have adequate public services. Thus, the potential for increased demand on existing, or the need for additional services would be required to be specifically evaluated as part of the coastal permit review process.

Therefore, as modified to ensure that a cottage industry considered exempt from coastal permit requirements would not increase the demand for services, and by clarifying which cottage industries require a coastal permit, the IP would conform with and be adequate to carry out LUP policies regarding services and coastal permit requirements.

Visual Resources

The LUP incorporates Coastal Act Section 30251 and states that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public

importance, and that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, and to be visually compatible with the character of surrounding areas. New development in highly scenic areas shall be subordinate to the character of its setting. Section 30250(a), also incorporated into the LUP, requires that development be sited and designed to avoid individual and cumulative impacts on coastal resources.

The cottage industries that conform with the proposed performance standards listed in Section A314-12(C), and as modified by Suggested Modification Nos. 8 and 9 discussed above as appurtenant and accessory uses not requiring a coastal development permit, would not involve new accessory structures or additions to existing structures and would not result in adverse impacts on visual resources. In addition, the performance standards prohibit those cottage industries allowed without a coastal development permit from producing evidence of their existence in the external appearance of the dwelling or premises. This standard prohibits, for example, equipment and storage of materials used for industry purposes on the property in a manner that could result in adverse impacts to coastal views and/or the character of the surrounding area. Furthermore, the performance standards require that all lights be directed on site and shielded to reduce glare to adjacent areas, which further limits the potential for adverse impacts to visual resources.

Those proposed cottage industries that conform with the performance standards of Section 314-12(D) would be permitted with a coastal development permit. These performance standards limit the cottage industry, in part, to (1) only one structurally attached sign not to exceed two square feet, (2) occupying no more than two acres of total land area, including portions of the lot occupied by buildings, storage areas, and work places devoted to the cottage industry, and (3) prohibit on site sales. The sign size standard is protective of visual resources because signs of such limited size are generally too small to cause any significant impacts on views to the ocean or to community character. Furthermore, any proposed development involving the construction or expansion of dwellings or accessory structures for purposes of accommodating a cottage industry would require a coastal development permit and would require evaluation of the proposed cottage industry for conformance with all relevant policies of the LCP, including the visual resource policies. Moreover, the prohibition of on-site sales would reduce visual impacts by reducing the amount of visible activity associated with the cottage industry, such as gathering of people and the parking of unusual amounts of vehicles in a residential neighborhood, thereby helping ensure the use would be compatible with the character of the surrounding area.

Therefore, as the performance standards would reduce the visual impact of proposed cottage industries to a level of insignificance and would act to protect coastal views and ensure the proposed use would be compatible with the character of the surrounding area, the Commission finds that the proposed amendment to Section 314-12 of the IP, Cottage

Industries, conforms with and is adequate to carry out the LUP regarding visual resources.

Environmentally Sensitive Habitat Areas

The LUP incorporates Coastal Act Section 30240 which requires that environmentally sensitive habitat areas (ESHA) be protected against any significant disruption of habitat values, and that only uses dependent on such resources be allowed within such areas. The policy further requires that development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas be sited and designed to prevent impacts which would significantly degrade such areas, and be compatible with the continuance of such habitat areas.

The cottage industries that conform with the proposed performance standards listed in Section A314-12(C), and as modified by Suggested Modification Nos. 8 and 9 discussed above as appurtenant and accessory uses not requiring a coastal development permit, would not involve new accessory structures or additions to existing structures and would not result in adverse impacts to environmentally sensitive habitat areas. In addition, the performance standards prohibit those cottage industries allowed without a coastal development permit from producing evidence of their existence in the external appearance of the dwelling or accessory structure. Thus, a cottage industry allowed pursuant to this section is required to operate internal to an existing structure in a manner that would not result in additional structures, or storage of materials associated with the industry, from potentially encroaching into an ESHA or a buffer area required to protect an ESHA. Furthermore, the performance standards in this section require that all light be directed on site and shielded to reduce glare to adjacent areas, and limits increases of exterior ambient noise levels anywhere on the site to no more than 5 dB. These standards would further ensure that no significant disruption occurs to ESHA, or ESHA buffers, either on or adjacent to the site as a result of the cottage industry.

Those proposed cottage industries that conform with the performance standards of Section 314-12(D) would be permitted with a coastal development permit. These performance standards limit the cottage industry to occupying no more than two acres of total land area, including portions of the lot occupied by buildings, storage areas, and work places devoted to the cottage industry. As any proposed development involving the construction or expansion of dwellings or accessory structures that could potentially impact environmentally sensitive habitat areas within the allowable two acre area would require a coastal development permit, an evaluation of the proposed cottage industry for conformance with all relevant policies of the LCP would be required, including the environmentally sensitive habitat area policies.

Therefore, as the performance standards would ensure that proposed cottage industry uses would be sited and designed to prevent impacts that would significantly degrade environmentally sensitive habitat areas, the Commission finds that the proposed

amendment to Section 314-12 of the IP, Cottage Industries, conforms with and is adequate to carry out the LUP regarding the protection of environmentally sensitive habitat areas.

Principally Permitted Use

As discussed in Section 9. of the findings below, since the IP lists several principal permitted uses in the Commercial Neighborhood (CN), Residential Single Family (RS), Mixed Residential (R2), Rural Residential Agriculture (RA), Agriculture Exclusive (AE), Commercial Timber (TC), and Timberland Production (TPZ) zoning districts with no single use designated as *the* “principal permitted use,” the IP is interpreted such that every development permitted as a principal permitted use in a particular zoning district is appealable to the Commission. This creates a cumbersome and unnecessary problem that can be rectified by identifying one “principal permitted use” for purposes of appeals to the Coastal Commission. Therefore, Suggested Modification Nos. 24, 28, 30, 31, 32, 33, and 34 would identify one “principal permitted use” for these zoning districts for purposes of appeals to the Coastal Commission pursuant to Section 312-13.12.3 of the County’s Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act.

c. Suggested Modifications

Suggested Modification No. 8 (Cottage Industries):

Add the following language to Section A314-12(C)(1) as follows:

(C). Performance Standards For Cottage Industries Allowed As Appurtenant And Accessory Use.

(1) Cottage Industries allowed as a principally permitted appurtenant and accessory use to the residential use shall comply with all the following performance standards in addition to the applicable Industrial Performance Standards of A314-18:

...

(n) The cottage industry shall not significantly increase demand for, or require significant amounts of additional services including water, sewer, septic, or wastewater treatment.

Suggested Modification No. 9 (Cottage Industries)

Add subsection (2) to revised Section A314-12(C), “Performance Standards For Cottage Industries Allowed As Appurtenant And Accessory Use” as follows:

(2) No coastal development permit is required for cottage industries that conform with the performance standards of (a)–(n) above if established in an existing, permitted residence or accessory structure. A coastal development permit will be required for a new accessory structure or enlarged residence in which such cottage industry is to be located that is not otherwise exempt from coastal development permit requirements pursuant to Title 14, California Code of Regulations Section 13250(b).

3. DENSITY BONUS ORDINANCE

a. Amendment Description

The County proposes to add a new section to the Coastal Zoning Ordinance regarding the provision of density bonuses for affordable housing developments. The existing Humboldt County LUP states, “*Housing opportunities for persons of low and moderate income shall be protected, encouraged, and provided, where feasible. New housing in the Coastal Zone shall be developed in conformity with the goals, policies, standards, and programs of the Humboldt County Housing Element.*” The proposed Residential Density Bonus Ordinance would be added to the IP to implement the intent of the LUP as modified and discussed in finding II (1)(c) above, and to implement the density bonus provisions mandated by Government Code Section 65915 regarding affordable housing.

Government Code Section 65915 requires local governments to provide residential density increases to developers who agree to develop low-income and senior housing. The statute currently requires that local governments grant a density bonus of at least a 20% increase over the maximum allowable density when a developer agrees to construct at least 10% of the total units in a housing development for lower-income households, or 5% for very low income households, or to construct a senior housing project. The density bonus further rises up to 35% if more than the above-stated minimums of affordable housing are provided. For example, the current land use plan has a Medium Density Residential plan designation with a prescribed gross density of 8 to 30 units per acre. With application of the density bonus provisions, an affordable housing project in this district could be approved with a density of up to 36 to 41 units per acre (i.e., 20-35% increase above 30 units) based on the total number of affordable units proposed as part of the development. Government Code Section 65915(b) also requires local governments to grant at least one other incentive, in addition to the density bonus, unless the local government finds that the additional incentive is not necessary to allow for affordable housing.

The proposed amendment would incorporate the density bonus provisions mandated by Government Code Section 65915 regarding affordable housing. Currently, the certified Coastal Zoning Ordinance does not contain density bonus provisions for affordable housing. As proposed, the amendment would allow a minimum 25% increase over the

maximum allowable density (with fractions rounded up) when a developer agrees to construct at least 20% of the total units in a housing development for low or moderate income households or 10% of the total units for lower-income households, or to construct a senior housing project. The Commission notes that Government Code Section 65915 has been amended since the County submitted the subject LCP amendment, resulting in various discrepancies among target unit and bonus percentages in the proposed amendment and Code requirements. Additionally, consistent with Government Code Section 65915, the proposed amendment allows additional incentives or concessions to be granted by the County to make the housing development economically feasible. These proposed incentives include, but would not be limited to, reducing site development standards or architectural design requirements, allowing mixed-use development, granting a density bonus of more than 25%, or providing financial subsidies.

The proposed amendment also includes definitions related to affordable housing, application requirements, and provisions for terms of a Density Bonus Housing Agreement between the County and the developer part of which would ensure that the units remain affordable for a specified period of time.

b. Relevant LUP Policies

LUP Section 5.15 (Eel River, South Coast, McKinleyville, and North Coast Area Plans), Section 4.15 (Trinidad Area Plan), and Section 4.10 (Humboldt Bay Area Plan):

DENSITY BONUSES AND PLANNED UNIT DEVELOPMENTS

Density ranges described in land use designations may be exceeded by a minimum of 25% and a maximum of 35% to encourage affordable housing production pursuant to §65915 of the California Government Code (Density Bonuses) in effect in 2005. Any housing development approved pursuant to Government Code Section 65915 shall be consistent with all applicable certified local coastal program policies and development standards. In reviewing a proposed density increase, the County shall identify all feasible means of accommodating the density increase and consider the effects of such means on coastal resources. The County shall only grant a density increase if the County determines that the means of accommodating the density increase proposed by the applicant does not have an adverse effect on coastal resources. If, however, the County determines that the means for accommodating the density increase proposed by the applicant will have an adverse effect on coastal resources, the County shall not grant the density increase. Density ranges may also be exceeded within Planned Unit Development (PUD's) up to 25% if increasing the density would not have an adverse effect on coastal resources and would be consistent with all applicable local coastal program policies and development standards. The 25% density bonus limit for PUDs is the maximum density bonus permitted; it may not be combined with any other density bonus allowed by County or State regulations if densities greater than 25% would result. Also a variety of

housing types and a mixture of residential and commercial uses may be allowed to encourage affordable housing production under the provisions of State law referenced above, and in PUD's to encourage the provision of extraordinary public benefits within subdivisions.

LUP/Coastal Act Section 30240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(c) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

LUP/Coastal Act Section 30233

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland; provided, however, that in no event shall the size of the wetland area used for such boating facility, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, be greater than 25 percent of the total wetland area to be restored.
- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities.

- (5) Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
 - (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
 - (7) Restoration purposes.
 - (8) Nature study, aquaculture, or similar resource-dependent activities.
- (b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge soils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems.
- (c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetlands or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

LUP/Coastal Act Section 30250

(B) New development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

LUP/Coastal Act Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

c. Analysis

The County's proposed IP amendment as submitted that would include a Residential Density Bonus Ordinance does not indicate how density increases and development incentives would be applied consistent with the limits on density bonus and development incentives of the PUD provisions of the LUP as modified, and the resource protection policies of the Land Use Plan and zoning ordinance.

As discussed above, Government Code Section 65915(b) requires local governments to grant developers of affordable housing not only a density bonus but also at least one of the concessions or incentives identified in Section 65915(h) unless the local government finds that the additional concession or incentive is not required to make the development economically feasible. However, Government Code Section 65915 does not indicate how a local government is to choose which incentive to provide. Therefore, the type of incentive to grant is discretionary under the Government Code. Additionally, the Government Code does not specify how the density bonus is to be accommodated. Similarly, how the increase is accommodated and whether to provide an increase beyond 20% are within the local government's discretion.

The means of accommodating the density bonus and development incentives are not specifically laid out by the proposed IP amendment. The County's proposed Residential Density Bonus Ordinance does not explicitly include incentives for affordable housing that rest on the relaxation of development standards intended to protect coastal resources. In other words, the County has not specifically proposed to encourage affordable housing by allowing construction in or near sensitive coastal resource areas where residential development would ordinarily be prohibited by other policies of the LCP. The proposed language of subsection (E) regarding Development Incentives indicates that the need for incentives will vary for different housing developments and therefore, the allocation of additional incentives are to be determined on a case-by-case basis. The amendment goes on to outline the types of additional incentives that may be considered, but states that incentives are not limited to those listed. Examples of listed incentives include a reduction of site development standards or a modification of zoning code requirements such as reduced minimum lot sizes and dimensions and minimum yard setbacks, and increased maximum lot coverage and building height. The listed development incentives also include a general provision stating, "*Other regulatory incentives or concessions proposed by the developer or the County which result in identifiable cost reductions or avoidance.*" As development incentives would be determined on an individual project basis, and because the policies allow for County discretion in considering incentives that are not specifically listed, this section of the proposed amendment could be implemented in a manner inconsistent with resource protection provisions of the Land Use Plan. For example, the proposed policy language regarding developer incentives could be interpreted as allowing otherwise prohibited fill of a wetland to accommodate a reduction

of site development standards such as reduced lot sizes and increased lot coverage. Therefore, the proposed IP amendment would not conform with or adequately carry out the coastal resource protection policies of the LUP and must be denied.

Government Code Section 65915 was specifically amended in 2002 to include subsection (m) that states, “*Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coast Act (Division 29 commencing with Section 30000) of the Public Resources Code.*” Therefore, although the Government Code requires local governments to provide certain density bonus and development incentives to encourage affordable housing, the County may not grant such bonuses or incentives if they would result in adverse impacts to coastal resources. For example, if it is determined that the density bonus could be accommodated only by filling coastal wetlands, or by reducing buffer widths needed to protect environmentally sensitive habitat areas in a manner that would lessen the effect of LCP policies intended to protect such resources, the density increase could not be granted.

Therefore, to ensure that that the means of accommodating the density bonus standards of Government Code Section 65915 would not have adverse impacts on coastal resources, and would be consistent with the residential density bonus and coastal resource protection policies of the LUP, the Commission attaches Suggested Modification No. 10. The modification would add a Procedures of Approval section that would require the County to identify all feasible means of accommodating the density increase with specific consideration toward the effects of such means on coastal resources when reviewing a proposed density increase. The County shall only grant a density increase if it is determined that the means of accommodating the density increase proposed by the applicant would not have an adverse effect on coastal resources. If, however, the County determines that the means for accommodating the density increase proposed by the applicant would have an adverse effect on coastal resources, the County shall not grant the density increase.

Similarly, to ensure that the means of accommodating an incentive or concession would not have adverse impacts on coastal resources, Suggested Modification No. 10 also requires the County to consider all feasible alternatives in reviewing proposed incentives and concessions for their effects on coastal resources. The County shall only grant an incentive or concession if the County determines that the development incentive or concession requested by an applicant would not have any adverse effects on coastal resources. The County may grant one or more of those incentives or concessions that do not have an adverse effect on coastal resources. If all feasible incentives or concessions would have an adverse effect on coastal resources, the County shall not grant any incentive or concession.

Government Code Section 65915 has been amended since the time the County submitted the proposed LCP amendment for certification by the Commission. As a result, there are

several discrepancies between the current requirements of the Government Code and the proposed language of the County's LCP amendment regarding affordable housing and density bonus provisions. The County's proposed language raises inconsistencies with regard to (1) the definition of density bonus, (2) the percentage of target units required to be provided by developers for low and very low income households, (3) the length of time that target units are required to remain affordable, and (4) the basis upon which the number of additional incentives is determined. Suggested Modification Nos. 11-15 are required to establish consistency between the County's proposed amendment and the current applicable requirements of Government Code Section 65915.

In conclusion, as the proposed IP amendment fails to include provisions that ensure that density bonus and development incentive requirements will be implemented in a manner that is fully protective of coastal resources, and would be consistent with the residential density bonus and coastal resource protection policies of the LUP, the Commission finds that the proposed amendment does not conform with and adequately carry out the residential density bonus and resource protection policies of the LUP and must be denied. However, the Commission finds that if modified, the proposed amendment could be found to conform with and adequately carry out the IP as modified. Therefore, the Commission has suggested modifications to the IP to ensure that the IP will conform with and adequately carry out the resource protection policies of the LUP.

c. Suggested Modifications

Modification No. 10 (Density Bonus):

Insert the following language before proposed section (F) to proposed section A314-12.1 as follows (and re-letter following sections accordingly):

F. Procedures for Approval

A. When required by Government Code Section 65915, the County shall grant a density bonus that allows the applicant to build a minimum of 25% and a maximum of 35% more units than a property's zoning would ordinarily allow, if the County finds:

- 1. The project is for any one of the types of residential projects described in Government Code Section 65915(b);**
- 2. The project complies with all standards set forth in Government Code Section 65915;**
- 3. The project is a housing development consisting of five or more units.**

B. In accordance with Government Code Section 65915 (g), the density bonus shall be calculated based on the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the LCP. The “otherwise maximum allowable residential density” shall mean the maximum density determined by applying all site-specific environmental development constraints applicable under the coastal zoning ordinance and land use plan certified by the Coastal Commission.

C. Any housing development approved pursuant to Government Code Section 65915 shall be consistent with all applicable certified local coastal program policies and development standards. In reviewing a proposed density increase, the County shall identify all feasible means of accommodating the density increase and consider the effects of such means on coastal resources. The County shall only grant a density increase if the County determines that the means of accommodating the density increase proposed by the applicant does not have an adverse effect on coastal resources. If, however, the County determines that the means for accommodating the density increase proposed by the applicant will have an adverse effect on coastal resources, the County shall not grant the density increase.

D. In addition to a density bonus, the County shall grant to a housing development that complies with the provisions of Section A. above, one of the incentives or concessions identified in Government Code Section 65915(h), unless the County finds that an incentive or concession is not required in order to provide for affordable housing costs or rents. In reviewing a proposed incentive or concession, the County shall consider all feasible alternative incentives and concessions and their effects on coastal resources. The County shall only grant an incentive or concession if the County determines that the development incentive or concession requested by an applicant pursuant to this section will not have any adverse effects on coastal resources. The County may grant one or more of those incentives or concessions that do not have an adverse effect on coastal resources. If all feasible incentives or concessions would have an adverse effect on coastal resources, the County shall not grant any incentive or concession.

E. For the purposes of this section, “coastal resources” means any resource which is afforded protection under the policies of Chapter 3 of the Coastal Act, California Public Resources Code section 30200 *et seq.*, including but not limited to public access, marine and other aquatic resources, environmentally sensitive habitat, and the visual quality of coastal areas.

Suggested Modification No. 11 (Density Bonus)

Add the following language to the definition of "Density Bonus" consistent with §65915(g)(1):

B. Definitions. Whenever the following terms are used in this Section, they shall have the meaning established by this Subsection:

...

(4) "Density Bonus" means a minimum density increase of at least 25 percent, **unless a lesser percentage is elected by the applicant**, over the otherwise ~~Maximum Residential Density~~ **under the certified LCP. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (C) of this section. For each 1 percent increase above 10 percent in the percentage of units affordable to lower income households, the density bonus shall be increased by 1.5 percent up to a maximum of 35 percent.**

Suggested Modification No. 12 (Density Bonus)

Revise Section C. Implementation, as follows consistent with §65915(b)(1)-(2):

C. Implementation. The County shall grant either: a Density Bonus, or a Density Bonus with an Additional Incentive(s), or Equivalent Financial Incentive; as set forth in Subsection 5 of this Section, to an applicant or developer of a Housing Development, who agrees to provide the following:

(1) At least ~~20~~ **10** percent of the total units of the Housing Development as Target Units affordable to Lower Income Households; or

(2) At least ~~10~~ **5** percent of the total units of the Housing Development as Target Units affordable to Very Low Income Households; or

(3) Senior citizen housing.

In determining the minimum number of Density Bonus Units to be granted pursuant to this Section, the Maximum Residential Density for the site shall be multiplied by 0.25. When calculating the number of permitted Density Bonus Units, any fractions of units shall be rounded to the next larger integer.

In determining the number of Target Units to be provided pursuant to this Section, the Maximum Residential Density shall be multiplied by ~~0.10~~ **0.05** where Very Low Income Households are targeted, or by ~~0.20~~ **0.10** where Lower Income Households are targeted. The Density Bonus Units shall not be included when determining the total number of Target Units in the Housing Development. When calculating the required number of Target Units, any resulting decimal fraction shall be rounded to the next larger integer.

In cases where a density increase of less than 25 percent is requested, no reduction will be allowed in the number of Target Units required. In cases where a density increase of more than 25 percent is requested, the requested density increase, if granted, shall be considered an Additional Incentive, as outlined in Subsection 5 of this Section.

In cases where the developer agrees to construct more than ~~20~~ **10** percent of the total units for Lower Income Households, or more than ~~40~~ **5** percent of the total units for Very Low Income Households, the developer is entitled to only one Density Bonus and an Additional Incentive(s) (or an Equivalent Financial Incentive) pursuant to Subsection 5 of this Section. Similarly, a developer who agrees to construct Senior Citizen Housing with ~~20 or 40~~ **10 or 5** percent of the units reserved for Lower- or Very Low-Income Households, respectively, is only entitled to one Density Bonus and an Additional Incentive(s). The County may, however, grant multiple Additional Incentives to facilitate the inclusion of more Target Units than are required by this Section.

Suggested Modification No. 13 (Density Bonus)

Revise Section D. Development Standards, as follows consistent with §65915(c):

D. Development Standards.

Target Units should be constructed concurrently with Non-Restricted Units unless both the County and the developer/applicant agree within the Density Bonus Housing Agreement to an alternative schedule for development.

Target Units shall remain restricted and affordable to the designated group for a period of 30 years (or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program; or rental subsidy program), ~~under the following circumstances:~~

~~==== (1) Both a Density Bonus and an Additional Incentive(s) is granted; or~~

~~==== (2) An Equivalent Financial Incentive equivalent to a Density Bonus and an Additional Incentive(s) is granted.~~

~~Target Units shall remain restricted and affordable to the designated group for a period of 10 years under the following circumstances:~~

~~(3) Only a Density Bonus is granted and no Additional Incentives are granted; or~~

~~(4) An Equivalent Financial Incentive equivalent to only a Density Bonus is granted.~~

Suggested Modification No. 14 (Density Bonus)

Revise Section E. Development Incentives, as follows consistent with §65915(d)(2)(A)-(C):

E. Development Incentives.

The County shall provide a Density Bonus and an Additional Incentive(s), for qualified Housing Developments, upon the written request of a developer, unless the County makes a written finding that the Additional Incentive(s) is not necessary to make the Housing Development economically feasible to accommodate a Density Bonus, or unless all the required findings for approving subdivisions cannot be made.

The development incentives granted shall contribute significantly to the economic feasibility of providing the Target Units. Applicants seeking a waiver or modification of development or zoning standards shall show that such waivers or modifications are necessary to make the Housing Development economically feasible in accordance with Government Code Section 65915(e). This requirement may be satisfied by reference to applicable sections of the County's general plan housing element

The applicant shall receive the following number of incentives or concessions:

(1) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a condominium or planned development.

(2) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a condominium or planned development.

(3) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a condominium or planned development.

~~The need for incentives will vary for different Housing Developments. Therefore, the allocation of Additional Incentives shall be determined on a case-by-case basis. The Additional Incentives may include, but are not limited to, any of the following:~~

- (1) A reduction of site development standards or a modification of zoning code or architectural design requirements which exceed the minimum building standards provided in Part 2.5 (commencing with Section 18901) of Division 13 of the California Health and Safety Code). These may include, but are not limited to, any of the following:
 - (a) Reduced minimum lot sizes and dimensions.
 - (b) Reduced minimum yard setbacks.
 - (c) Increased maximum lot coverage.
 - (d) Increased maximum building height.
 - (e) Reduced on site parking standard; including the number or size of spaces.
 - (f) Reduced minimum building separation requirements.
 - (g) Reduced street standards (e.g. reduced minimum street widths).
- (2) Allow the Housing Development to include non-residential uses and/or allow the Housing Development within a non-residential zone.
- (3) Other regulatory incentives or concessions proposed by the developer or the County which result in identifiable cost reductions or avoidance.
- (4) A Density Bonus of more than 25 percent
- (5) Waived, reduced, or deferred planning, plan check, construction permit, and/or development impact fees.
- (6) Direct financial aid in the form of a loan or a grant to subsidize or provide low interest financing for on or off site improvements, land or construction costs.

The County may offer an Equivalent Financial Incentive instead of granting a Density Bonus and an Additional Incentive(s). The value of the Equivalent Financial Incentive shall equal at least the land cost per dwelling unit savings that would result from a Density Bonus and must contribute significantly to the economic feasibility of providing the Target Units pursuant to this Section.

Suggested Modification No. 15 (Density Bonus)

Revise Section G. Density Bonus Housing Agreement, as follows consistent with §65915(c)(1):

G. Density Bonus Housing Agreement.

Applicant/Developers requesting a Density Bonus, shall agree to enter into a Density Bonus Housing Agreement with the County. The terms of the draft agreement shall be reviewed and revised as appropriate by the Planning Director or designated staff, who shall formulate a recommendation to the Planning Commission for final approval.

...

The Density Bonus Housing Agreement shall include at least the following:

(1) The total number of units approved for the Housing Development, including the number of Target Units.

...

(4) Tenure of use restrictions for Target Units of at least ~~10 or~~ 30 years, in accordance with Subsection 4 of this Section.

...

4. DESIGN REVIEW

a. Amendment Description

The County proposes to amend Section A314-57 of the Coastal Zoning Ordinance regarding Design Review. The Design Review provisions apply to lands designated “D” on the County’s zoning map and are intended to preserve or enhance the area’s historical, cultural, or scenic values. Currently, a Special Permit is required for all development subject to the Design Review regulations except that solar collectors for on site use are exempt from the design review requirements. The proposed amendment would (1) change the Special Permit requirement to a requirement to obtain a coastal development permit, and (2) exempt certain additions to existing structures from coastal permit and design review requirements including (1) minor additions to existing structures provided that they meet certain area and height limitations and are not located in a sensitive coastal resource area, and (2) the installation or removal of windows, doors, or siding material provided that new siding material is non-reflective.

b. Relevant LUP/Coastal Act Policies

LUP/Coastal Act Policy 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

c. Analysis

In addition to changing the requirement to obtain a Special Permit to a requirement to obtain a coastal development permit in designated “D” combining zone areas, there are essentially two types of exemptions that the County is attempting to address in the amendment: (1) those types of development that are exempt from coastal development permits pursuant to Section 30610 of the Coastal Act and Sections 13250 and 13253 of the Commission’s administrative regulations regarding improvements to existing structures, and (2) a smaller subset of development types that may be exempt from the County’s design review requirement. However, as proposed, the County’s language is unclear regarding coastal permit and design review requirements.

As discussed previously, Coastal Act Section 30610 and the Commission’s regulations exempts certain types of development from coastal development permit requirements. The proposed amendment language attempts to follow, in part, the exemptions set forth in Section 30610 of the Coastal Act and Sections 13250 and 13253 of the Commission’s administrative regulations regarding improvements to existing structures, but is not fully accurate, inclusive, or consistent with the Coastal Act and the Commission’s regulations. The exemption provisions outlined in the Coastal Act and the Commission’s regulations are very specific regarding the types and locations of development that can be considered exempt from coastal development permits to ensure the protection of coastal resources. Any deviation from these exemptions proposed by the County may result in problems of interpretation that could lead to adverse impacts to coastal resources if development were allowed to occur without a permit where a permit is otherwise required by the Coastal Act and other provisions of the certified LCP.

As LCPs must be consistent with the Coastal Act, including adhering to requirements regarding the types of development that require permits, the Commission finds that the

proposed language proposed by the County's amendment would allow some types of development to be permitted without coastal permits in a manner inconsistent with the Coastal Act. Therefore, the proposed Implementation Plan amendment is not consistent with the Coastal Act and must be denied. However, the Commission finds that the proposed amendment can be modified to be made consistent with the Coastal Act. The Commission attaches Suggested Modification No. 16, to clarify that development identified as "exempt" in Sections 13250, 13252 and 13253 of Title 14, California Code of Regulations on lands designated "D" is exempt from the requirement for a coastal development permit, and exempt from the design review requirements of Section A314-57, unless a coastal development permit contains a condition stating that such exemptions are not available on the property. Furthermore, the modification would clarify the list of development proposed by the County to be exempt from design review requirements.

Protection of Visual Resources

The LUP incorporates Coastal Act Section 30251 and states that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance, and that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, and to be visually compatible with the character of surrounding areas. New development in highly scenic areas shall be subordinate to the character of its setting.

The Design Review provisions of the IP as proposed to be amended would continue to be consistent with LUP/Coastal Act policy 30251 regarding the protection of visual resources. The proposed changes to the Design Review section do not change the existing substantive requirements of the Coastal Zoning Ordinance that act to protect visual resources to and along the coast. The proposed amendment would change only the process by which the Design Review combining zone is implemented in that the substantive policies regarding the protection of visual resources would be implemented solely through the coastal development process rather than through both a special permit and coastal development permit process as the ordinance currently requires. Furthermore, as modified, the amendment would not exempt any types of development from coastal development permit requirements not otherwise identified as exempt in Sections 13250, 13252 and 13253 of Title 14, California Code of Regulations.

Therefore, as the proposed amendment does not affect the implementation of existing LUP policies regarding the protection of visual resources, the Commission finds that the proposed amendment to Section 314-57 of the IP, Design Review, conforms with and is adequate to carry out LUP policies regarding visual resources.

d. Suggested Modifications

Suggested Modification No. 16 (Design Review):

Revise Section A314-57 (B) & (C) as follows:

A. Applicability. These regulations shall apply to lands designated "D" on the zoning map. ~~Solar collectors for on site use are exempt from the design review requirement of this section.~~

B. ~~Special Coastal Development Permit Required.~~ A ~~special coastal development permit~~ is required for all development subject to these regulations ~~except that~~ **development identified as "exempt" in Title 14, California Code of Regulations, sections 13250, 13252 and 13253 on lands designated "D" is exempt from the requirement for a coastal development permit, and exempt from the design review requirements of Section A314-57, unless a coastal development permit contains a condition stating that such exemptions are not available on the property.**

C. ~~The following development shall be exempt from coastal development permit requirements for design review:~~

(1) Solar collectors for on site use;

~~(2)-(4)~~ Additions to existing structures that meet **the following all the** criteria: ~~listed below:~~

~~(b) The addition of solar collectors for on site use;~~

(a) The addition would result in an increase of 10 percent or less of floor area to the structure. The percentage increase shall include any previous additions that have been exempted from design review pursuant to this section, and

~~(b)-(c)~~ The addition does not increase the height of the structure by more than 10 percent, and

~~(c)-(d)~~ The addition is not located on a beach, wetland, within 50 feet of a coastal bluff or coastal stream, seaward of the mean high tide line, or in a coastal scenic or coastal view area,

~~(3)-(2)~~ Installation or removal of windows, doors or siding material provided that new siding material is non-reflective.

The application for the permit shall be accompanied by a fee in the amount as established by ordinance or resolution of the Board of Supervisors.

Development exempt from coastal development permit requirements for design review shall be consistent with all other requirements of this chapter and any applicable permit.

5. SPECIAL OCCUPANCY PARKS

a. Amendment Description

The County proposes to amend Section A314-30 (Recreational Vehicles) and the definitions section of the Coastal Zoning Ordinance, and other related sections, to include various changes to the definitions of commercial recreation uses (i.e., types of camping), associated changes to permitted uses in certain zoning districts, and some modifications to the criteria for approving these various uses. According to the County, the proposed zoning ordinance changes are intended to help accommodate nomadic housing consistent with State law.

First, the amendment would add new definitions and clarify existing definitions relating to nomadic housing. Currently, the County's zoning ordinance contains a single definition of "Campgrounds and Recreational Vehicle Parks." The proposed amendment would add additional definitions to further specify and distinguish among "Incidental Camping Areas," "Recreational Vehicle Parks," "Temporary Recreational Vehicle Parks," and "Tent Camps," all of which would fall under the definition of "Special Occupancy Park" and would be added to the existing "Commercial Use Types" category outlined in existing Section A313-7.

According to the County, the proposed definitions are consistent with the definitions contained in the California Health and Safety Code and would simplify the ordinance by no longer drawing a distinction between nomadic housing parks and Special Occupancy Parks (e.g., RV parks, trailer parks, etc). The County indicates that these distinctions are no longer necessary because State law regarding these types of uses have become more flexible. For example, the State's definition of RVs now allows for non-recreational occupancy. Also, the definition of RV includes a variety of forms of vehicles used by nomadic households of all income levels, such as trailers and truck campers and thus, distinguishing between trailer and RVs for example, is redundant. The State's definition of "Special Occupancy Park" has also been changed to allow parcel sizes of less than five acres.

Second, the amendment would amend Section A314-30 that currently sets forth development standards for Recreational Vehicle Parks. The title of the section would be changed to Special Occupancy Parks, which by definition, includes Recreational Vehicle Parks, Temporary Recreational Vehicle Parks, Incidental Camping Areas, and Tent Camps. Accordingly, the amendment would replace references to "Recreational Vehicle

Park” with “Special Occupancy Park” and the former RV development standards would apply to all four use types. The amendment would also make minor changes to the development standards including (1) reducing the required minimum site area for Special Occupancy Parks from a minimum of three acres to a minimum parcel size of one acre, and (2) reducing the maximum length of occupancy in a Special Occupancy Park from six months to four months in any twelve-month period. The amendment would also add a provision that would allow modifications to the development standards and the length of occupancy limitations with a Special Permit provided the development would be compatible with surrounding land uses, and meet minimum State standards for habitability. The amendment also adds requirements for park caretakers to ensure safety and compatibility of the park.

Lastly, the proposed amendment would add Incidental Camping Areas, Tent Camps, and Temporary Recreational Vehicle Parks to the list of principal permitted uses in the Coastal Dependent Commercial Recreation (CRD) zoning district. “Recreational Vehicle Parks” would be changed to “Special Occupancy Parks” and would remain a conditionally permitted use in the Public Recreation (PR) and Commercial Recreation (CR) zoning districts.

b. Relevant LUP Policies

The certified LUP directly incorporates a number of Chapter 3 policies of the Coastal Act, including Sections 30213, 30222, 30223, 30220, and 30221. These policies are as follows:

LUP/Coastal Act Section 30213

(Part) Lower cost visitor and recreation facilities ... shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

LUP/Coastal Act Section 30222

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal- dependent industry.

LUP/Coastal Act Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

LUP/Coastal Act Section 30220

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

LUP/Coastal Act Section 30221

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

c. Analysis

The proposed amendment raises several issues with regard to its ability to adequately conform with and carry out the LUP including, (1) potential impacts from increased density and intensity of use, and (2) the protection of priority and coastal dependent uses.

Protection of Priority Uses

The County's LUP incorporates Coastal Act Sections 30213 and 30222 that provide for the protection of low-cost visitor-serving recreational uses and prioritizes these uses over other development types such as private residential use.

As proposed to be amended, the coastal zoning ordinance would replace "Recreational Vehicle Park" with "Special Occupancy Parks," (which, in addition to Recreational Vehicle Parks, includes Temporary Recreational Vehicle Parks, Incidental Camping Areas, and Tent Camps), as conditionally permitted uses in the Public Recreation (PR) and Commercial Recreation (CR) zoning districts. The amendment would add Temporary Recreational Vehicle Parks, Incidental Camping, and Tent Camps as a principal permitted use in the Coastal Dependent Commercial Recreation (CRD) zoning district. These three zoning districts are intended to accommodate visitor serving facilities and recreational development in a manner that implements the LUP provisions discussed above that encourage and protect such uses.

The four development types that fall under the definition of "Special Occupancy Park" (i.e., Recreational Vehicle Parks, Temporary Recreational Vehicle Parks, Incidental Camping Areas, and Tent Camps) can be characterized as forms of low-cost, recreational uses and thus, encouraging the development of Special Occupancy Parks can be considered consistent with LUP/Coastal Act policy 30213, among others, that encourage such uses. However, the proposed amendment would add language to the ordinance for Special Occupancy Parks that would allow for the modification of development criteria in a manner that could result in these development types becoming a form of residential development, rather than recreation or visitor-serving.

As proposed to be amended, subsection (E) limits the length of occupancy in a Special

Occupancy Park as follows:

- (1) Persons occupying with total hook-up capacity, including sewer, water and electricity, shall not occupy any campground space in a ~~recreational vehicle park~~ Special Occupancy Park for a period exceeding ~~six (6)~~ four (4) months in any twelve month period, nor shall the cumulative occupancy by such persons of different campground spaces anywhere in the facility exceed six months in any twelve month period.
- (2) Persons occupying tents or vehicles with less than total hook-up capacity shall not occupy any campground space in a ~~recreational vehicle park~~ Special Occupancy Park for a period exceeding thirty days in any twelve month period, nor shall the cumulative occupancy by such persons of different campground spaces anywhere in the facility exceed a total of 30 days in any twelve month period.

In addition, the existing language of the limitations set forth in subsection (E) specifically states that *“No person or group of persons other than the owner of operator thereof shall occupy any of the campground spaces in a recreational vehicle park [proposed to be changed to Special Occupancy Park] for permanent family or group residential use”* (emphasis added).

The proposed amendment would add a provision that would allow a hearing officer to modify these limitations on the length of occupancy within Special Occupancy Parks with a Special Permit, provided the findings can be made that the development will be compatible with surrounding land uses and meet minimum state standards for habitability. Including the ability to modify the length of occupancy standards as proposed to an unspecified and potentially indefinite period of time could result in campgrounds becoming more similar to a residential use rather than a recreational and visitor-serving use as intended by the zoning districts in which such uses are allowed (i.e., PR, CR, CRD). As a result, suitable sites for visitor-serving facilities and recreational development would not be adequately protected and could effectively be excluded by a type of residential development inconsistent with LUP/Coastal Act policy 30222 that specifically affords priority to visitor serving commercial recreational facilities over private residential development.

Therefore, the proposed IP amendment as submitted does not conform with and is not adequate to carry out the LUP with regard to the protection of priority uses and must be denied. This denial is in accord with the provisions of Health and Safety Code Section 18865.2(d). The Commission also notes that the amendment to authorize exemptions from the time limitation for occupancy, as proposed to apply to all special occupancy parks in the coastal zone, all vehicle spaces in such parks, and to potentially allow conversion of such parks to permanent residential use, is also inconsistent with Section 30222 of Chapter 3 of the Coastal Act. Although it has not done so, if the County sought to amend its LUP policies in a way that would allow such exemptions, this likewise

would not be consistent with Chapter 3. However, the Commission finds that if the proposed IP amendment is modified to delete this provision allowing the length of stay to be modified, the IP amendment would conform with and carry out the certified LUP. Therefore, the Commission attaches Suggested Modification No. 17 to delete the provision for and associated references to modifying the length of occupancy standards to ensure that Special Occupancy Parks are not misused for residential development and that sites that are particularly important and suited for visitor-serving facilities and recreational uses are protected.

Coastal Dependent Commercial Recreation

As noted above, the County's LUP incorporates Coastal Act Sections 30220, 30221, 30222, 30223, and 30224 that provide for the protection of recreational uses in coastal areas.

The County proposes to add Incidental Camping Areas, Tent Camps, and Temporary Recreational Vehicle Parks to the list of Commercial Use Types allowed as a principal permitted use in the Coastal Dependent Commercial Recreation zoning district. Coastal Dependent Commercial Recreation is defined in the Commercial Use Type section of the County's zoning ordinance as including, "*visitor serving recreational facilities which require channel access, such as marinas serving other than solely commercial vessels, fishing piers, boat launching facilities, bait shops, and marine hardware.*"

According to the definitions of each of these three uses, none of them meet the criteria for 'coastal dependent' in that they do not require channel access, or otherwise require shoreline or coastal access to operate. In other words, unlike a marina, or fishing pier, which clearly require channel access to operate, Temporary RV Parks, Incidental Camping Areas, and Tent Camps can be sited and operated at inland locations without compromising their intended purpose. Thus, allowing these types of uses in the Coastal Dependent Commercial Recreation District as principal permitted uses could, in some instances, displace the water-oriented visitor-serving and recreational uses that this district is reserved for and would be in clear conflict with the intent of the zoning district and LUP policies that afford priority for coastal dependent visitor serving recreational uses. The Commission further notes that there are relatively few locations along the coastline of Humboldt County that are suitable for marinas, fishing piers, and other uses currently allowed in the Coastal Dependent Commercial Recreation zone due to the rugged nature of the shoreline as well as competing uses along the shoreline of Humboldt Bay that afford access to navigable water.

Therefore, the Commission finds that as submitted, the proposed IP amendment is not adequate to conform with and carry out the certified LUP regarding coastal dependent uses and must be denied. However, the amendment could be modified to conform with and adequately carry out the certified LUP regarding coastal dependent uses. The Commission attaches Suggested Modification No. 18 that would move Temporary

Recreational Vehicle Parks, Incidental Camping Areas, and Tent Camping from principal permitted uses in the Coastal Dependent Commercial Recreation zoning district as proposed, to conditionally permitted uses in this zone. Allowing Special Occupancy Parks in this zone may be appropriate in some cases, and even complementary to other allowable coastal dependent recreational uses. For example, a CRD-zoned site is already developed with a marina, boat ramp, or fishing pier and includes an area of adjacent vacant upland that may not be needed to expand coastal dependent recreational uses, may be well suited to accommodate a campground that could be used by, among others, visitors who are coming to the site to boat or fish. Moving these uses to conditional permitted use in the Coastal Dependent Commercial Recreation district would ensure that these proposed uses receive a level of review necessary to ensure that they would be allowed only in the event that adequate visitor-serving recreational uses exist nearby and that they would not preclude the use of the site for coastal dependent uses, consistent with LUP/Coastal Act Sections 30220, 30221, and 30222. As uses that are not principally permitted, any coastal development permit approved for such uses by the County could be appealed to the Commission for review by the Commission. The Commission finds that if modified as suggested below, the proposed amendment would conform with and be adequate to carry out the LUP regarding priority uses.

Principally Permitted Use

As discussed in Section 9. of the findings below, since the IP lists several principal permitted uses in the Public Recreation (PR), Commercial Recreation (CR), and Coastal Dependent Commercial Recreation (CRD) zoning districts with no single use designated as *the* “principal permitted use,” the IP is interpreted such that every development permitted as a principal permitted use in a particular zoning district is appealable to the Commission. This creates a cumbersome and unnecessary problem that can be rectified by identifying one “principal permitted use” for purposes of appeals to the Coastal Commission. Therefore, Suggested Modification Nos. 25-27 would identify one “principal permitted use” for these zoning districts for purposes of appeals to the Coastal Commission pursuant to Section 312-13.12.3 of the County’s Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act.

d. Suggested Modifications

Suggested Modification No. 17 (Special Occupancy Park)

Revise proposed Section A314-34.1(F) as follows:

- F. Modification of Development Criteria. Modification of the development ~~criteria~~ standards ~~(A) through (D)~~ **in (C)** of this Section may be granted by the Hearing Officer subject to making the required findings for Granting Special Permit Exceptions in Chapter 5 and the findings that the development will be consistent

with all applicable state and local health and safety standards, and that the development would have no adverse impact on coastal resources.

~~Modification of the development standard (E) of this Section may also be allowed with a Special Permit, provided the following supplemental findings are made: 1) the development will be compatible with surrounding land uses, and 2) the development meets minimum State standards for habitability.~~

~~To ensure the park is compatible with surrounding property uses, the Hearing Officer may limit the term of the permit to a specified time period, and may require that the caretaker of the park has specific plans and sufficient experience with anticipated users to effectively engage the cooperation of the users to maintain the park in a clean, safe and sanitary condition.~~

...

Suggested Modification No. 18 (Special Occupancy Park)

Revise Section A313-24 as follows:

Section A313-24. CRD COASTAL DEPENDENT COMMERCIAL RECREATION

A. Principal Permitted Uses.

- (1) Civic Use Type
 - Minor Utilities
- (2) Commercial Use Type
 - Coastal Dependent Recreation
- (3) Natural Resources Use Types
 - Resource-Related Recreation
 - Coastal Access Facilities

- ~~(4) Commercial Use Types~~
 - ~~Incidental Camping Area~~
 - ~~Tent Camp~~
 - ~~Temporary Recreational Vehicle Park~~

B. Conditionally Permitted Uses. The following use types are permitted pursuant to the Development Permit Procedures in Chapter 5 of this Division.

- (1) Residential Use Types
 - Single Family Residential

Caretaker's Residence

- (2) Civic Use Types

...

- (3) Commercial Use Types

Visitor Serving Facilities

Transient Habitation

Commercial Recreation

Recreational Vehicle Park

Incidental Camping Area

Tent Camp

Temporary Recreational Vehicle Park

...

6. PLANNED UNIT DEVELOPMENT

a. Amendment Description

The County proposes to amend Coastal Zoning Ordinance Section A314-62 regarding Planned Unit Developments (PUD) to (1) increase the allowable density standard from 20% to a maximum of 25% if the development incorporates extraordinary public benefits, (2) add additional residential density standards, and (3) provide updated and more thorough design guidelines.

The planned unit development provisions apply to areas designated "P" on the County's zoning maps and are intended to apply to (1) any site where more than four residential, commercial, or industrial buildings or a combination are proposed, (2) where the development proposal is within a residential zone and includes residential and non-residential development; and (3) any site or development proposal where application of the PUD provisions would provide a better means of carrying out the intent of the County's General Plan. The "P" designation is applied as a combining zone in combination with the base residential, commercial, industrial, or other zoning district that applies to the site.

First, the Modifications of Development Standards section would be amended to include additional Residential Density Standards. This section would be amended to increase the allowable residential density bonus from the existing allowance of 20% to a maximum of 25% if the development incorporates extraordinary public benefits. Currently, the

density bonus provisions in the zoning ordinance do not specify what constitutes an “extraordinary public benefit,” but simply leaves the determination of whether a development qualifies for the density bonus to the discretion of the Planning Commission. As amended, extraordinary public benefits would be identified, consistent with those identified in the LUP, to include benefits such as enhancement of sensitive habitats, visual or cultural resources, development and maintenance of public access to recreational areas, or at least 40% of the total lot area for common open space subject to specific requirements. Other than the residential density standards, the only other standard proposed to be amended is the setback standards, which would delete the requirement that all detached structures be spaced a minimum of six feet for every ten feet in height of the highest building affected.

Second, the residential density standards would be amended to include additional detailed requirements for benefits involving the provision of open space and clarification of density allowances.

Third, the amendment would clarify that the 25% residential density bonus limit is the maximum density bonus permitted and may not be combined with any other density bonus allowed by county or state regulations if greater than 25% would result. For example, the PUD density bonus could not be combined with the residential density bonus also proposed under the IP amendment in a manner that results in an overall bonus greater than 25%. The proposed amendment also clarifies criteria in calculating permitted densities.

Fourth, the proposed amendment would delete some existing guidelines and add additional guidelines to the existing “Design Guidelines” section. According to the amendment, the guidelines are intended to be considered by architects, engineers, and other persons involved in designing PUDs, and by the Planning Commission and Board of Supervisors in reviewing them based on the recognition that there is generally agreement on basic design principles that comprise a well designed development. The amended guidelines set forth design considerations for natural features, circulation, parking, architecture, and other considerations such as laundry facilities, trash and recycling receptacles, and underground utilities.

b. Relevant LUP Policies

LUP Section 5.15 (Eel River, South Coast, McKinleyville, and North Coast Area Plans), Section 4.15 (Trinidad Area Plan), and Section 4.10 (Humboldt Bay Area Plan):

DENSITY BONUSES AND PLANNED UNIT DEVELOPMENTS

Density ranges described in land use designations may be exceeded by a minimum of 25% and a maximum of 35% to encourage affordable housing production pursuant to §65915 of the California Government Code (Density Bonuses) in effect in 2005. Any

housing development approved pursuant to Government Code Section 65915 shall be consistent, with all applicable certified local coastal program policies and development standards. In reviewing a proposed density increase, the County shall identify all feasible means of accommodating the density increase and consider the effects of such means on coastal resources. The County shall only grant a density increase if the County determines that the means of accommodating the density increase proposed by the applicant does not have an adverse effect on coastal resources. If, however, the County determines that the means for accommodating the density increase proposed by the applicant will have an adverse effect on coastal resources, the County shall not grant the density increase. Density ranges may also be exceeded within Planned Unit Development (PUD's) up to 25% if increasing the density would not have an adverse effect on coastal resources and would be consistent with all applicable local coastal program policies and development standards. The 25% density bonus limit for PUDs is the maximum density bonus permitted; it may not be combined with any other density bonus allowed by County or State regulations if densities greater than 25% would result. Also a variety of housing types and a mixture of residential and commercial uses may be allowed to encourage affordable housing production under the provisions of State law referenced above, and in PUD's to encourage the provision of extraordinary public benefits within subdivisions.

LUP Section 3.15

D. PLANNED UNIT DEVELOPMENT

3. It shall be the policy of the County to encourage the Planned Unit Development (PUD) concept. Where such utilization would provide extraordinary benefits to the community and to the County, such as: dedications of open space and public access, protection of visual resources and sensitive habitats beyond that already required in Sections 3.41 and 3.42, incentives may include increases of up to 25% over planned densities if increasing the density would not have an adverse effect on coastal resources and would be consistent with all applicable local coastal program policies and development standards. The 25% density bonus limit for PUDs is the maximum density bonus permitted; it may not be combined with any other density bonus allowed by County or State regulations if densities greater than 25% would result.

LUP/Coastal Act Section 30240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(d) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

LUP/Coastal Act Section 30233

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland; provided, however, that in no event shall the size of the wetland area used for such boating facility, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, be greater than 25 percent of the total wetland area to be restored.
- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities.
- (5) Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- (7) Restoration purposes.
- (8) Nature study, aquaculture, or similar resource-dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge soils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetlands or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

LUP/Coastal Act Section 30250

(C) New development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

LUP/Coastal Act Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

c. Analysis

The existing LUP provision allows the Planning Commission to approve modifications to the development standards when reviewing Planned Unit Development applications. As noted above, the Modifications of Development Standards section of the PUD provisions would be amended to add additional standards, including a 5% increase to the already allowable density bonus. The development standards of this section include standards regarding the following: (1) residential density (proposed to be amended as discussed

below), (2) lot size, (3) lot coverage, (4) setbacks, and (5) permitted principal building types.

With regard to the residential density, the proposed amendment would allow up to a 25% density increase where currently a 20% density bonus is allowed. Thus, for every four units normally allowed, a fifth unit could be allowed in a PUD provided the development incorporates extraordinary public benefits. The certified LUP contains an existing provision regarding planned unit development and states as follows:

...

D. PLANNED UNIT DEVELOPMENT

1. It shall be the policy of the County to encourage the Planned Unit Development (PUD) concept. Where such utilization would provide extraordinary benefits to the community and to the County, such as: dedications of open space and public access, protection of visual resources and sensitive habitats beyond that already required in Sections 3.41 and 3.42, incentives may include increases of up to 25% over planned densities if increasing the density would not have an adverse effect on coastal resources and would be consistent with all applicable local coastal program policies and development standards. The 25% density bonus limit for PUDs is the maximum density bonus permitted; it may not be combined with any other density bonus allowed by County or State regulations if densities greater than 25% would result.

The proposed IP amendment lists examples of extraordinary public benefits “*such as enhancement of sensitive habitats, visual or cultural resources, development and maintenance of public access to recreational areas, or at least forty percent (40%) of the total lots area of the PUD reserved for common open space...*” and is intended to carry out the LUP provision stated above. As noted in the amendment description above, the current PUD residential density standards do not detail what is considered an “extraordinary public benefit” beyond what is set forth in the LUP, but rather, leaves the determination of whether a development qualifies for the density bonus to the discretion of the Planning Commission. The proposed language sets forth specific requirements regarding the provisions of common open space areas, but does not include further detail as to the means of accommodating any of the other optional public benefits noted. While the proposed language is more detailed than the existing IP language regarding the types of extraordinary public benefits to be considered for allowing a density bonus in planned unit developments, the proposed language remains ambiguous as to what would be considered an appropriate and adequate means of providing an “extraordinary public benefit” that would sufficiently offset the increased density in a manner that is consistent

with the resource protection policies of the LUP.

As the decision of whether or not to approve modifications to the development standards, including the density increase, is left to the discretion of the County with minimal approval criteria, this section of the proposed amendment could be implemented in a manner inconsistent with coastal resource protection policies of the Land Use Plan and with the Planned Unit Development section of the six Area Plans, which as modified, only allow the density bonuses if increasing the density would not have an adverse effect on coastal resources and is consistent with all applicable LCP policies and standards. For example, modification of the development standards could be interpreted as allowing otherwise prohibited fill of a wetland to accommodate a density increase if the developer enhances sensitive habitats elsewhere as an extraordinary public benefit. Therefore, as submitted, the IP amendment does not conform with and carry out the LUP, as modified, and must be denied.

If modified, the proposed IP amendment could be found to conform with and adequately carry out the LUP, as modified. To ensure that the IP amendment is adequate to carry out the coastal resource protection and PUD policies of the LUP, the Commission attaches Suggested Modification No.19 that would clarify that the modifications of development standards outlined in Section A314-62(E)(1)-(5) regarding residential density, lot size, lot coverage, setbacks, and building types shall only be approved if it is determined that the means of accommodating the proposed development standard modifications would not have an adverse effect on coastal resources. If, however, the County determines that the means for accommodating the proposed development standard modifications proposed by the applicant would have an adverse effect on coastal resources, the County shall not grant the development standard modifications.

With regard to the proposed changes and additions to the design guidelines of the PUD provisions, the IP amendment does not contain specific PUD guidelines that would conflict with those proposed in the IP. However, although the proposed language simply encourages the consideration of the various design guidelines as elements of what “should” guide a well thought out planned unit development, the guidelines could be misinterpreted as overriding other requirements of the LCP, or as being read in isolation from other LCP requirements. Therefore, Suggested Modification No. 20 clarifies that the guidelines do not eliminate or supersede the need to comply with all other applicable requirements of the certified LCP.

In conclusion, as submitted, the IP amendment does not conform with and adequately carry out the LUP and must be denied. Only as modified by Suggested Modification Nos. 19 and 20 below, would the Implementation Plan amendment regarding Planned Unit developments be adequate to conform with and carry out the LUP.

d. Suggested Modifications

Suggested Modification No. 19 (Planned Unit Development):

Add the following language to existing Section A314-62 (E) as follows:

E. Modifications of Development Standards. The following development standard modifications may be approved by the Planning Commission reviewing the Planned Unit Development permit applications: **only if it is determined that the means of accommodating the proposed development standard modifications would not have an adverse effect on coastal resources. If, however, the County determines that the means for accommodating the proposed development standard modifications proposed by the applicant would have an adverse effect on coastal resources, the County shall not grant the development standard modifications.**

Suggested Modification No. 20 (Planned Unit Development):

Add the following language to proposed Section A314-62 (F) as follows:

F. Design Guidelines. These guidelines shall be considered by architects, engineers, and other persons involved in designing Planned Unit developments, and by the Planning Commission and Board of Supervisors in reviewing them. The guidelines recognize that while few people are in complete accord on what makes a well designed project, there is general agreement on a number of basic design principles, which are enumerated below. **Consideration of these guidelines does not eliminate or supercede the need to comply with all other applicable requirements of the certified LCP.**

7. **SECOND RESIDENTIAL UNITS**

a. **Government Code (and AB1866) Second Unit Requirement Background**

Signed by former Governor Davis on September 29, 2002, AB 1866 added three new provisions to Section 65852.2 of the Government Code that are particularly significant for the purposes of reviewing proposed second units in residential zones within the coastal zone. The law now:

- 1) Requires local governments that adopt second unit ordinances to consider second unit applications received on or after July 1, 2003 “ministerially without discretionary review or a hearing.” (Government Code Section 65852.2(a)(3))
- 2) Requires local governments that have not adopted second unit ordinances to “approve or disapprove the [second unit] application ministerially without discretionary review.” (Government Code Section 65852.2(b)(1))

- 3) Specifies that “nothing in [Section 65852.2] shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act ... except that the local government shall not be required to hold public hearings for coastal development permit applications for second units.” (Government Code Section 65852.2(j))

Thus, AB 1866 significantly changes one component of local government procedures regarding coastal development permits for second units in residential zones (public hearings), but does not change the substantive standards that apply to coastal development permits for such second units.

Pursuant to AB 1866, local governments can no longer hold public hearings regarding second units in residential zones. This prohibition applies both to initial local review and any subsequent local appeals that may be allowed by the LCP. The restriction on public hearings, however, does not apply to the Coastal Commission itself. The Commission can continue to conduct public hearings on proposed second units located in areas where the Commission retains permitting jurisdiction and when locally approved coastal development permits are appealed to the Commission.

AB 1866 does not change any other procedures or the development standards that apply to second units in residential zones located within the coastal zone. Rather, it clarifies that all requirements of the Coastal Act apply to second units, aside from requirements to conduct public hearings. Thus, for example, public notice must be provided when second unit applications are filed and members of the public must be given an opportunity to submit comments regarding the proposed development. When a second unit application is appealable, local governments must still file a final local action notice with the Commission and inform interested persons of the procedures for appealing the final local action to the Commission. In addition, all development standards specified in the certified LCP and, where applicable, Chapter 3 of the Coastal Act apply to such second units.

b. Amendment Description

The County proposes to amend Sections A314-31 (Second Residential Unit), A315-16 (Supplemental Findings), A313-16 (Residential Single Family Use Zone), and A313-17 (Rural Residential Agricultural Zone) of the Coastal Zoning Ordinance to encourage development of second units in single family and rural residential areas. According to the County, the intent of the proposed amendments are to establish consistency with its Housing Element, which states that second units should be encouraged wherever possible because they significantly contribute to the stock of affordable housing. The LCP defines a second residential unit as “*a fully equipped dwelling unit which is ancillary and subordinate to a principal dwelling unit located on the same lot for occupancy by individuals or a family.*”

First, the proposed amendment would allow second units as a principal permitted use in the Residential Single Family (RS) and Rural Residential Agriculture (RA) zoning districts.

Second, the proposed amendment would modify the second residential unit section of the ordinance (Section A314-31), which sets forth standards for the “*creation of a subordinate residential unit or the conversion of existing living space into independent living space on lots in rural areas and residential neighborhoods.*” The proposed amendment would allow second units in the RS and RA zones with a coastal development permit if certain development criteria set forth in Section A314-31(D) are met. If all of the criteria cannot be met, the amendment would allow second units with a Special Permit, rather than a Use Permit, provided the second unit meets the existing waiver standards regarding density and maximum floor area, and the proposed new waiver standards regarding building site and road access.

Third, the proposed amendment would add additional supplemental findings required to be made when approving a second residential unit. In addition to the existing supplemental findings requiring that the second unit is found to be subordinate to the principal residence and compatible with the character of the neighborhood, the amendment would require that the development is also found to be consistent with general plan policies regarding (1) maintenance of open space, (2) retention of agriculture and timber lands, and (3) protection of the environment.

Lastly, other changes to the general provisions and standards of the second unit section of the ordinance include (1) allowing more than one permit for secondary dwelling units to be issued to the same person each year, (2) reducing the required distance between the second unit and the existing building from a maximum of 300 feet to 30 feet, and (3) establishing a frontage road improvement standard.

c. Relevant LUP Policies

The certified LUP directly incorporates a number of Chapter 3 policies of the Coastal Act, including Sections 30250(a), 30240, 30251, 30241, and 30242. These policies are as follows:

LUP/Coastal Act Policy 30250(a)

(a) New development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

LUP/Coastal Act Policy 30240

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

LUP/Coastal Act Policy 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

LUP/Coastal Act Policy 30241

The maximum amount agricultural production of prime agricultural land shall be maintained in to assure the protection of the areas' agricultural economy and conflicts shall be minimized between agricultural and urban land uses through all of the following:

- (a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.
- (b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses and where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.
- (c) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.

- (d) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.
- (e) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b) of this section, and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

LUP/Coastal Act Policy 30242

All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

c. Analysis

The proposed amendments to the Coastal Zoning Ordinance provisions regarding second units raises several issues with regard to its ability to conform with and adequately carry out the LUP, including (1) unclear standards as to when a coastal development permit is required, (2) lack of clear requirements for adequate public services to serve new development, and (3) the potential for impacts to coastal resources including visual, and agricultural resources.

Coastal Development Permit Requirements

The proposed amendment attempts to distinguish between second units that would be allowable with a coastal development permit and those second units that would be allowable with a Special Permit based on satisfying certain development criteria. The proposed language of this portion of the amendment is as follows (language proposed to be added by the County is shown in underline and language proposed to be deleted by the County is shown in ~~strikethrough~~):

- A. Second Residential Units Permitted With Coastal Development Permit or Special Permit Use Permit. A second residential unit use type, as defined in Chapter 2, may be permitted with a coastal development permit in RS and RA zones if all the criteria of A314-31(D) are met. A second residential unit that cannot meet all the criteria in A314-31(D) may be permitted with a special permit pursuant to A314-31(G)-(J) below.

The language of the proposed amendment is misleading in that it suggests that no coastal development permit is required for second units that do not meet the criteria in subsection (D), but that they may be permitted with a Special Permit. However, pursuant to Coastal Act Section 30600, a coastal development permit is required for all “development.” The definition of “development” set forth by Coastal Act Section 30106 and incorporated into the County’s LUP states in applicable part: *“development means, on land, ... the placement or erection of any solid material or structure; ... a change in the density or intensity of use of land...”* Regardless of the specific development criteria that a second unit may or may not meet, any proposed second unit would clearly meet the definition of development and thus, would require a coastal development permit. Therefore, the proposed Implementation Plan amendment would not be consistent with Coastal Act coastal development permit requirements and must be denied. However, the Commission finds that the amendment could be modified to be made consistent with Coastal Act requirements and certified if so modified.

As proposed by the County to be designated a principal permitted use in the Rural Residential and Single Family Residential zoning districts, second units approved by the County would not be automatically appealable to the Commission pursuant to Coastal Act Section 30603(4). Because second units have the potential to raise several significant cumulative as well as individual coastal resource issues such as impacts to visual resources, environmentally sensitive habitat areas, agricultural resources, and public services as discussed further below, the Commission finds that it is important to reserve the Commission’s ability to appeal any second unit approved by the County that raises a potential issue of conformance with the certified LCP.

The proposed amendment would designate second units as a principal permitted use in the Rural Residential Agriculture (RA) and Residential Single Family (RS) zoning districts. Ordinarily, a coastal development permit granted for a use that is designated a principal permitted use is not appealable to the Commission under Section 30603(4) of the Coastal Act, whereas a coastal development permit granted for a conditional use generally is appealable. However, as discussed in Section 9 of the findings below, since the IP as modified lists several principal permitted uses in both the Rural Residential and Single Family residential zoning districts with no single use designated as the “principal permitted use,” the IP is interpreted such that every development permitted as a principal permitted use in a particular zoning district is appealable to the Commission. This creates a cumbersome and unnecessary problem that can be rectified by identifying one “principal permitted use” for purposes of appeals to the Commission. As discussed in Section 9, Suggested Modification Nos. 28 and 31 identify “Single Family Residential” as the principal permitted use for both the RA and RS zoning districts for purposes of appeals to the Coastal Commission pursuant to Section 312-13.12.3 of the County’s Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act. As “Second Residential Unit” is not designated as the principal permitted use for purposes of appeal, coastal development permits granted for second units in these zoning districts will be

appealable to the Commission. The ability to appeal coastal permits granted for second units to the Commission affords significant protection for agricultural, visual, wetland, and environmentally sensitive habitat area resources consistent with LUP/Coastal Act sections 30240, 30241, 30242, and 30251.

To clarify permit requirements for second units, the Commission attaches Suggested Modification No. 21, which, in applicable part, would clarify that all second units would require a coastal development permit. As modified to clarify that all second units require a coastal development permit and a use permit, the criteria of Section A314-31(B) would be consistent with Coastal Act coastal permit requirements.

Public Services

The LUP incorporates Coastal Act Section 30250(a) requiring that new development be located within or near existing developed areas, or in other areas with adequate public services able to accommodate it. The County's LUP distinguishes between urban and rural development, and directs development to developed areas best able to accommodate it.

Construction of a second unit on a site where a primary residence exists inherently intensifies the use of the subject parcel. The intensified use creates additional demands on public services such as water, sewage, electricity, and roads and poses the need for new, or additional public services beyond those necessary to serve the primary residence. To reduce cumulative impacts as a result of residential second units, Section A314-31(C)-(D) sets forth development regulations and standards for second units such as minimum lot size, total floor area, and design standards, but does not explicitly require demonstration of adequate water and sewer service or septic capability to serve the proposed second unit.

To effectively conform with and implement LUP policies regarding new development, second units would need to be supported by adequate services and facilities. Without such requirement, the proposed IP provisions regarding second units would allow a class of development that could displace services that are directed by the LCP to higher priority uses, and/or draw on public services even if there aren't adequate services available.

Therefore, the proposed Implementation Plan amendment would not conform with and carry out certified LUP/Coastal Act Policy 30250(a) and must be denied. To make the necessity for adequate services and facilities explicit, the Commission attaches Suggested Modification No. 22 to add an additional development standard requiring that an applicant for a second unit provide evidence of adequate services to serve the second residential unit including water and sewer/septic capabilities. The Commission finds that as modified, the IP amendment is consistent with LUP/Coastal Act Policy 30250(a).

Agricultural Resources

The County's LUP incorporates Coastal Act Sections 30241 and 30242 that set forth provisions for the protection of agricultural land and minimizing conflicts between agricultural and urban land uses by, in part, limiting the conversion of agricultural land for non-agricultural uses and by assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability.

The development policies of the LUP encourage new development to be directed to areas where urban services are currently available, and require that certain findings be made prior to the extension of services. According to the County, these policies not only encourage fiscal responsibility in the provision of County services to areas of new development, but also limit unwarranted development of agriculture lands. The issue of preserving agricultural uses is particularly important on lands between Eureka and Arcata, as well as the lands west of Arcata, both being agricultural areas directly adjacent to areas of intense development.

The proposed changes are intended to allow second units in Rural Residential Agricultural Zone Districts (RA) without regard to the General plan density when the site is planned and zoned for a minimum parcel size of five (5) acres or less. In general, existing parcels of this nature are characterized as large single-family residential properties that allow for the use of agriculture. However, agricultural uses are not the dominant land use in this district. In most cases, these parcels are relatively nonproductive with respect to agricultural use potential. Furthermore, the proposed IP amendment does not pertain to areas zoned Agriculture Exclusive (AE), where the soils are productive and agricultural activity is the dominant land use.

Nonetheless, siting a residential second unit within an RA-zoned area that is used agriculturally could adversely affect agricultural productivity, inconsistent with LUP/Coastal Act policies 30241 and 30242. Therefore, the proposed Implementation Plan amendment would not conform with or carry out the certified LUP and must be denied. However, the Commission finds that the amendment could be modified to conform with the LUP. Therefore, the Commission attaches Suggested Modification No. 22 to add an additional development standard A314-31(D)12 to the residential second unit provisions of the zoning ordinance to protect agricultural productivity. The suggested modification would prohibit all development associated with second residential units from encroaching onto prime agricultural soils and where there are not prime soils be sited so as to minimize impacts to ongoing agriculturally related activities. In addition, the Commission attaches Suggested Modification No. 23 to make it clear that all residential second units must conform to these standards to be permitted.

The proposed amendment would add a requirement to the Supplemental Findings that must be made in approving second units that the development is consistent with general plan policies regarding, among others, the retention of agricultural lands. To clarify this

proposed language, the Commission attaches Suggested Modification No. 23 that would change “general plan” to “LCP.” In addition, the suggested modification would require the decision-making authority must adopt supplemental findings for such units demonstrating how the development is consistent with development standard A314-31(D)12 and other standards of the second residential unit provisions of the zoning ordinance.

Therefore, as suggested to be modified, the IP amendment would be adequate to conform with and carry out the LUP policies regarding the protection of agricultural resources.

Visual Resources

The LUP incorporates Coastal Act Section 30251 and states that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance, and that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, and to be visually compatible with the character of surrounding areas. New development in highly scenic areas shall be subordinate to the character of its setting. Section 30250(a), also incorporated into the LUP, requires that development be sited and designed to avoid individual and cumulative impacts on coastal resources.

To ensure that visual resources are protected consistent with the existing LUP visual policies, Suggested Modification No. 22 adds development standard A314-31(D)(10) which requires that residential second units not significantly obstruct public views from any public road, trail, or public recreation area to, and along the coast. In addition, the Commission attaches Suggested Modification No. 23 to make it clear that all residential second units must conform to this standard to be permitted. Furthermore, as provided under Suggested Modification No. 23, the decision maker would be required to make a detailed finding that the proposed residential second unit complies with this development standard for all coastal development permits that approve, or conditionally approve, residential, second units.

Therefore, the Commission finds that the proposed amendment to the IP regarding second units, as modified, conforms with and is adequate to carry out the policies of the LUP regarding visual resources.

Environmentally Sensitive Habitat Areas

Section 30240 (incorporated by reference into the certified LUP) of the Coastal Act requires that development adjacent to ESHA is sited and designed to prevent impacts that would significantly degrade ESHA and to be compatible with the continuance of the habitat areas. The existing certified LCP provides general policies which require

development adjacent to ESHA, to be regulated to avoid adverse impacts on habitat resources, including measures such as setbacks, buffers, grading and water quality controls. Additionally the LUP and Zoning Ordinance provide specific development standards by ESHA type.

To ensure that all new residential second unit development is consistent with the environmentally sensitive habitat protection policies of the certified LUP, the Commission attaches Suggested Modification No. 22 which inserts new development standard A314-31(D)(11), which prohibits second units from being sited within permitted within 100 feet of a wetland or ESHA or the average setback of existing development as determined by the string line method, consistent with existing setback policies of the certified LCP. In addition, the Commission attaches Suggested Modification No. 23 to make it clear that all residential second units must conform to this standard to be permitted. Furthermore, as provided under Suggested Modification No. 23, the decision maker would be required to make a detailed finding that the proposed residential second unit complies with this development standard for all coastal development permits that approve, or conditionally approve, residential, second units.

Therefore, the Commission finds that the proposed amendment to the IP regarding second units as modified, conforms with and is adequate to carry out the policies of the LUP regarding environmentally sensitive habitat and wetlands.

Public Access/Recreation

To carry out the requirement of Section 4 of Article X of the California Constitution, Coastal Act Section 30210 (incorporated by reference into the certified LUP) provides that maximum access and recreational opportunities be provided consistent with public safety, public rights, private property rights, and natural resource protection. Coastal Act Section 30211 (also incorporated by reference into the certified LUP) requires that development not interfere with the public's right of access to the sea with certain exceptions. Section 30240 of the Coastal Act (incorporated by reference into the certified LUP) further requires that development adjacent to parks and recreation areas be sited and designed to prevent impacts. To ensure that public access and recreation are protected consistent with the existing LUP policies described above, Suggested Modification No. 22 adds development standard A314-31(D)(9) which requires that residential second units not obstruct public access to and along the coast, or public trails.

In addition, the Commission attaches Suggested Modification No. 23 to make it clear that all residential second units must conform to this standard to be permitted. Furthermore, as provided under Suggested Modification No. 23, the decision maker would be required to make a detailed finding that the proposed residential second unit complies with this development standard for all coastal development permits that approve, or conditionally approve, residential, second units.

For the reasons above, the Commission finds that the proposed IP amendments are not consistent with or adequate to carryout the provisions of LUP Policies with respect to new development, prime agricultural soils, environmentally sensitive habitat areas, and public access unless modified as suggested above.

d. Suggested Modifications

Suggested Modification No. 21 (Second Units)

Revise Section A314-31(B) as follows:

- B. Second Residential Units Permitted With Coastal Development Permit ~~or~~ and Special Permit Use Permit. A second residential unit use type, as defined in Chapter 2, may be permitted with a coastal development permit in RS and RA zones if all the criteria of A314-31(D) are met. A second residential unit that cannot meet all the criteria in A314-31(D) may be permitted with a coastal development permit and special permit pursuant to A314-31(G)-(J) below so long as the second unit meets the criteria of A314-31(D)(8)-(13) below.

Suggested Modification No. 22 (Second Units)

Add the following language to Section A314-31(D):

- D. Development Regulations and Standards. The following development regulations and standards shall apply to all second residential units:

...

- (8) Services. The applicant shall provide evidence of adequate services to serve the second residential unit including water supply and sewage disposal.**
- (9) Public Access. Second residential units shall not obstruct public access to and along the coast, or public trails.**
- (10) Visual Resources. Second residential units shall not significantly obstruct public views from any public road, trail, or public recreation area to, and along the coast.**
- (11) Environmentally Sensitive Habitat Areas and Wetlands. All development associated with second residential units shall be located no closer than 100 feet from the outer edge of an environmentally sensitive habitat area or the**

average setback of existing development immediately adjacent as determined by the “string line method.”

(12) Agricultural Lands. All development associated with second residential units shall be prohibited on prime agricultural soils and where there are no prime soils be sited so as to minimize impacts to ongoing agriculturally-related activities.

Suggested Modification No. 23 (Second Units)

Add the following language to Section A315-16 regarding Supplemental Findings for Second Residential Units:

A. Residential Use Findings.

- (1) Second Residential Unit. The second residential unit is subordinate to the principal residence and is compatible with the character of the neighborhood, and the development is consistent with ~~general plan~~ **LCP policies regarding maintenance of open space, retention of agriculture and timber lands, and protection of the environment. the criteria of A314-31(D)(8)-(13).**

8. OTHER PROVISIONS

The proposed amendment also includes several additional proposed changes to the Coastal Zoning Ordinance that do not raise an issue of conformance with or ability to carry out and implement the land use plan. These miscellaneous amendments include:

- Reducing permit requirements for caretakers apartments in commercial areas;
- Eliminating the requirement that duplexes be built side-by-side;
- Allowing parkland dedication fees for second units to be paid upon construction of the second unit;
- Clarifying when single-family homes can be allowed on multi-family zoned lots.

a. Amendment Description

Caretaker’s Residence

The proposed amendment would move “Caretaker’s Residence” from a conditionally permitted use type to a principal permitted use type in the Neighborhood Commercial

(CN) zoning district. The amendment would clarify that the caretaker's residence is a principal permitted use in the CN district when it is incidental to and under the same ownership as an existing commercial use.

Duplex Unit Configuration

The proposed amendment would modify the definition of "Duplex" under the definitions of Residential Building Types (Section A312-4) to delete the requirement that the dwelling units be placed side by side. The change would allow for more flexible siting of duplex units.

Parkland Dedication

The proposed amendment would change the provisions regarding payment of parkland dedication fees and cause the provisions to apply throughout the coastal zone where parkland dedication fees are required, rather than just to the McKinleyville planning area. The amendment would add provisions for deferred payment of parkland dedication fees for secondary dwelling units until the second units are actually constructed. The amendment also adds a provision requiring that a fee paid in-lieu of land dedication be paid to the County prior to the recordation of the subdivision map or parcel map. The purpose of the parkland dedication requirements is to provide opportunities for public recreation in conjunction with residential development in conformity with the County General Plan.

Single-Family Homes on Multi-Family Zoned Lots

The proposed amendment adds a provision to the multi-family use zone provisions (RM) that states that single family residential uses are a conditionally permitted use in a multi-family zoning district "where it can be shown that the property could be developed in the future with multifamily dwellings. The Hearing Officer may require submittal of a development plan which shows how the multifamily dwelling units could be sited on the property in conformance with County requirements.

b. Analysis

These amendments all involve minor procedural or standard changes to the Implementation Plan that do not affect the basic designations or criteria of the Land Use Plan. All of these remaining amendment components can be approved as submitted as conforming with and being adequate to carry out the Land Use Plan.

9. PRINCIPAL PERMITTED USES

The proposed amendment to the Implementation Program includes various changes specifically to eleven of the nineteen zoning districts in the County's coastal zoning ordinance and to all zoning districts including the following: Neighborhood Commercial (CN), Public Recreation (PR), Commercial Recreation (CR), Coastal-Dependent

Commercial Recreation (CRD), Residential Single Family (RS), Residential Multi-Family (RM), Mixed Residential (R2), Rural Residential Agriculture (RA), Agriculture Exclusive (AE), Commercial Timber (TC), and Timberland Commercial Zone (TPZ). The existing IP includes a list of principal and conditional uses within each zoning district, as well as standards for lot size, density, site development, setbacks, etc.

a. Need for Modification

In general, the proposed amendment to the Implementation Program is consistent with and adequate to carry out the Land Use Plan, as modified by the suggested modifications discussed above. However, a few additional modifications are suggested to further bring the County's Coastal Zoning Ordinance into compliance with Coastal Act requirements.

Specifically, Coastal Act Section 30603 lists the types of development that may be appealed to the Coastal Commission when a local government has taken action on a coastal development permit application. Section 30603(4) includes: "Any development approved by a coastal county that is not designated as *the* principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500)" (emphasis added).

Neither the existing zoning districts in the IP, nor the language of the proposed amendment, identify one single principal permitted use for the purpose of appeals to the Coastal Commission. Since no one use is designated as the "principal permitted use," the IP is interpreted such that every development permitted as a principal permitted use in a particular zoning district is appealable to the Commission. This creates a cumbersome and unnecessary problem that can be rectified by identifying one "principal permitted use" for purposes of appeals to the Coastal Commission. Suggested Modification Nos. 24-34 would identify one "principal permitted use" for each zoning district implicated by the proposed amendment, as described below. The uses are defined in the "Glossary of Use Types" contained in Section D of the certified zoning ordinance.

b. Suggested Modifications

Suggested Modification No. 24

Add the following language to Section 313-2.1, CN: Neighborhood Commercial:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Neighborhood Commercial.

Suggested Modification No. 25

Add the following language to Section 313-5.1, PR: Public Recreation:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Public Recreation.

Suggested Modification No. 26

Add the following language to Section 313-5.2, CR: Commercial Recreation:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Commercial Recreation.

Suggested Modification No. 27

Add the following language to Section 313-5.3, CRD: Coastal Dependent Commercial Recreation:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Coastal Dependent Recreation.

Suggested Modification No. 28

Add the following language to Section 313-6.1, RS: Residential Single Family:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Single Family Residential use.

Suggested Modification No. 29

Add the following language to Section 313-6.2, RM: Residential Multi-Family:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Multi Family Residential.

Suggested Modification No. 30

Add the following language to Section 313-6.3, R2: Mixed Residential:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Single Family Residential.

Suggested Modification No. 31

Add the following language to Section 313-6.4, RA: Rural Residential Agriculture:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Single Family Residential.

Suggested Modification No. 32

Add the following language to Section 313-7.1, AE: Agriculture Exclusive:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is General Agriculture.

Suggested Modification No. 33

Add the following language to Section 313-7.2, TC: Commercial Timber:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Timber Production.

Suggested Modification No. 34

Add the following language to Section 313-7.3, TPZ: Timberland Commercial Zone:

For purposes of appeals to the Coastal Commission, pursuant to Section 312-13.12.3 of the Coastal Zoning Ordinance and Section 30603(a)(4) of the Coastal Act, the Principal Permitted Use (PPU) is Timber Production.

PART FIVE: CALIFORNIA ENVIRONMENTAL QUALITY ACT

In addition to making a finding that the amendment is in full compliance with the Coastal Act, the Commission must make a finding consistent with Section 21080.5 of the Public Resources Code. Section 21080.5(d)(2)(A) of the Public Resources Code requires that the Commission not approve or adopt an LCP:

... if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effects which the activity may have on the environment.

As discussed in the findings above, the amendment request, as modified, is consistent with the California Coastal Act and will not result in significant environmental effects within the meaning of the California Environmental Quality Act.

ATTACHMENTS:

Attachment A – Proposed County LCP Amendment

Attachment B – County Adopted Resolutions